Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
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(12)

No. 87-154

In The
Supreme Court of the United States
October Term, 1987

JOSHUA DeSHANEY, a Minor, by his Guardian ad litem, and MELODY DeSHANEY,

Petitioners,

vs.

WINNEBAGO COUNTY DEPARTMENT OF SOCIAL SERVICES; WINNEBAGO COUNTY; ANN KEMMETER and CHERYL STELSE,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

JOINT APPENDIX

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Petition for Writ of Certiorari Filed July 17, 1987.
Certiorari Granted March 21, 1988.

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TABLE OF CONTENTS

	Page
Relevant District Court Docket Entries	1
Complaint	2
Answer	18
Motion to Dismiss	30
Affidavit of Mark J. Mingo, Esq., with Attachments	32
Order to Treat Motion to Dismiss as Motion for Summary Judgment	86
Affidavit of Cheryl Stelse	87
Affidavit of John Bodnar	92
Affidavit of Ann Kemmeter	95
Attachments to Plaintiffs' Reply Brief	101
Affidavit of Wayne Yankala, Esq., with Attachments	161
Decision and Order Granting Summary Judgment	Cert. Petition 47-75
Judgment	Cert. Petition 76-77
Opinion of the Seventh Circuit Affirming the Holding of the District Court	Cert. Petition 36-46
Order of the Seventh Circuit Affirming the Holding of the District Court	Cert. Petition 78-79
Order of the Seventh Circuit Denying Rehearing	Cert. Petition 80-81

RELEVANT DOCKET ENTRIES

Date	NR.	Proceedings
3/ 4/85	1	COMPLAINT, Summons issued
3/29/85	3	Defts ANSWER
10/23/85	27	Winnebago County defts' motion for failure to state a claim and/or for judgment on the pleadings. D1-DISM/SUM JM
6/20/86	65	DECISION & ORDER(JWR) that the Motion of Defts Winnebago County Dept of Social Services, Winnebago County, Ann Kemmeter & Cheryl Stelse for Summary Judgment is Granted. Judgment shall be entered in favor of said Defts on Plaintiffs Joshua DeShaney's & Melody DeShaney's claims Pltfs claims against said Defts & against Deft Randy DeShaney under state tort are Dismissed w/o prejudice. EOD 6/23/86.
6/20/86	66	JUDGMENT (signed by Deputy Clerk) per above Order. EOD 6/23/86.
7/18/86	67	Pltf's Notice of Appeal to the 7th Circuit from order entered on 6/20/86. Short record mailed to 7th Circuit, copies to all parties.
5/ 4/87	73	CERTIFIED COPY of Order from the Seventh Circuit Court of Appeals that the Judgment of said DISTRICT Court in this cause appealed be & the same is hereby AFFIRMED, w/costs, in accordance w/ the opinion of this Court filed this date. w/ slip opinion. Contents returned 2 vols pleadings, 1 volume loose pleadings #43.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOSHUA DESHANEY, a Minor,
By His Guardian Ad Litem
Curry First, Esq.,
1219 North Cass Street,
Milwaukee, Wisconsin 53202

and

MELODY DESHANEY,
2950½ Plum Drive
Cheyenne, Wyoming 82001,

Plaintiffs, Case No. ———

vs.

WINNEBAGO COUNTY DEPARTMENT
OF SOCIAL SERVICES,
448 Algoma Blvd.
Oshkosh, Wisconsin 54901 COMPLAINT

and

WINNEBAGO COUNTY
Winnebago County Courthouse
415 Jackson Drive
Oshkosh, Wisconsin 54901

and

THE STATE OF WISCONSIN
State Capitol
Madison, Wisconsin

and

WISCONSIN DEPARMENT OF
HEALTH AND SOCIAL SERVICES
1 West Wilson Street
Madison, Wisconsin

and

LINDA RIVETZ, Individually and
as Secretary of the Wisconsin
Department of Health and
Social Services
1 West Wilson Street
Madison, Wisconsin

and

ANN KEMMETER, Individually and as
Director of Protective Services,
Winnebago County Department of
Social Services
448 Algoma Blvd.
Oshkosh, Wisconsin 54901

and

CHERYL STELSE, Individually and as
Director of Protective Services,
Winnebago County Department of
Social Services
448 Algoma Blvd.
Oshkosh, Wisconsin 54901

and

RANDY DESHANEY
1820 Chain Drive, Apt. 6
Menasha, Wisconsin,

Defendants.

Plaintiffs, complaining against Defendants, allege as follows:

FIRST CAUSE OF ACTION

1. This is an action for compensatory and punitive damages, and arises under the Due Process and Equal Protection clauses of the United States Constitution. This action, and the relief sought, are authorized by Title 42,

United States Code, Sections 1983, 1985 and 1988, and by the Due Process and Equal Protection clauses of the United States Constitution.

2. Plaintiff Joshua DeShaney is an infant and minor, and is a citizen of the United States. He presently resides in foster home placement provided for severely handicapped children in the State of Wisconsin. He is represented by his guardian ad litem and attorney, Curry First, Esq., who is an attorney duly licensed to practice law in the State of Wisconsin and in the United States District Court for the Eastern District of Wisconsin.

3. Plaintiff Melody DeShaney is an adult citizen of the United States and of the State of Wyoming, and is the natural mother of the Plaintiff Joshua DeShaney. She resides at 2950½ Plum Drive, Cheyenne, Wyoming 82001.

4. Defendant Winnebago County Department of Social Services is an agency of Winnebago County, a municipal corporation in the State of Wisconsin, and is located at 448 Algoma Blvd, Oshkosh, Wisconsin.

5. Defendant Winnebago County is a municipal corporation in the State of Wisconsin, organized and existing pursuant to the laws of said State.

6. Defendant State of Wisconsin is a public entity organized as a state and is one of the United States.

7. Defendant Wisconsin Department of Health and Social Services is a state agency of the State of Wisconsin, with offices located at 1 Wilson Street, Madison, Wisconsin.

8. Defendant Linda Rivetz at all relevant times is and was Secretary of the Wisconsin Department of Health and Social Services.

9. Defendant Ann Kemmeter was a social worker for Winnebago County Department of Social Services, with offices located at 211 North Commercial Street, Neenah, Wisconsin, and was the social worker directly responsible for the infant Plaintiff Joshua DeShaney.

10. Defendant Cheryl Stelse was a social worker supervising the child protective services and activities of the Winnebago County Department of Social Services. Her responsibilities included assigning and supervising cases and caseworkers and administering federal and state law and policy relating to child protective services. She was responsible for overseeing the care of the infant Plaintiff Joshua DeShaney.

11. Randy DeShaney is an adult citizen of the State of Wisconsin and is the natural father of the infant Plaintiff Joshua DeShaney.

12. Defendant Winnebago County and Defendant State of Wisconsin are herein being sued in their corporate capacities. Defendants Winnebago County Department of Social Services and Wisconsin Department of Health and Social Services are herein being sued as agencies of the County and the State, respectively. The individual defendants Linda Rivetz, Ann Kemmeter and Cheryl Stelse are herein being sued both individually and in their official capacities.

13. Defendant Randy DeShaney is herein being sued individually.

14. For clarity, Defendants Winnebago County, Winnebago County Department of Social Services, State of Wisconsin, Wisconsin Department of Health and Social

Services, Linda Rivetz, Ann Kemmeter and Cheryl Stelse will hereinafter, wherever appropriate, be referred to collectively as "the Public Defendants," to contradistinguish them from the private individual defendant Randy DeShaney.

15. On July 5, 1984, a Notice of Injury and Claim was made pursuant to Wis. Stats., Sec. 893.80, on behalf of Joshua DeShaney by his then guardian ad litem, George W. Curtis, Esq., and on behalf of Melody DeShaney, upon Defendants Winnebago County, Winnebago County Department of Social Services, and Ann Kemmeter. A Notice of Disallowance thereof was mailed to said guardian ad litem on September 4, 1984.

16. At relevant times to and until March 8, 1984, Joshua DeShaney was in the custody and control of Defendant Randy DeShaney.

17. During the time period in question Randy DeShaney repeatedly battered, assaulted and abused Joshua DeShaney, physically, and emotionally.

18. In 1982 or 1983 Chris DeShaney, the spouse of Randy DeShaney, reported to the Defendants the fact of the ongoing child abuse described above.

19. On or about November 30, 1983, Dr. T.L. Bowers, M.D., reported to the Public Defendants his diagnosis of child abuse of Joshua DeShaney, which Dr. Bowers had made in connection with his examination of the child at the Emergency Room of a local hospital.

20. The Oshkosh Police Department responded to complaint calls of family violence by Randy DeShaney on repeated occasions throughout the time period in question, including without limitation September 23, 1983; November 11, 1983; November 12, 1983; November 24, 1983; November 27, 1983; and January 4, 1984.

21. During the time period in question the minor child, Joshua DeShaney, was on multiple occasions taken to hospital emergency rooms for emergency medical care of various complaints including without limitation abrasions and lacerations on many parts of his body, usually accompanied by explanations that the child had fallen down the stairs.

22. The Public Defendants, and each of them, knew or by the exercise of even slight care reasonably should have known of the foregoing facts and circumstances and particularly of the strong likelihood and great danger of child abuse being committed upon Joshua DeShaney.

23. At all relevant times the Public Defendants and each of them had the duty, responsibility and authority under applicable law to supervise, monitor, oversee and promote the care, welfare, safety and wellbeing of Joshua DeShaney.

24. The Public Defendants and each of them actually undertook to supervise, monitor, oversee and promote the care, welfare, safety and wellbeing of Joshua DeShaney.

25. The Public Defendants, and each of them, caused Joshua DeShaney to be removed from the custody of Randy DeShaney by reason of the foregoing facts and circumstances, and particularly the child abuse being committed to and upon Joshua DeShaney, and caused him to be placed in protective placement.

26. The Public Defendants, and each of them, subsequently caused and permitted Joshua DeShaney to be taken out of protective placement and returned to the custody of Randy DeShaney.

27. The Public Defendants, and each of them, actively concealed and withheld from Plaintiff Melody DeShaney all knowledge and information concerning (1) the evidence and indications of child abuse upon her son Joshua DeShaney, (2) the removal of Joshua from the father's custody, (3) the return of Joshua to the father's custody, (4) the whereabouts of Joshua at any relevant time, and (5) the danger to Joshua of ongoing, continuing child abuse both presently and prospectively.

28. Plaintiff Melody DeShaney paid monthly child support for the care and maintenance of Joshua DeShaney, pursuant to a stipulation made in litigation initiated by the Public Defendants, wherein they demanded that she make such child support payments to them.

29. The Public Defendants actually knew the location, address and telephone number of Plaintiff Melody DeShaney at all relevant times.

30. Plaintiff Melody DeShaney would promptly have sought and obtained a formal legal change of the custody of Joshua back to herself had she known or been informed of the status or condition of Joshua, and she did not do so because Defendants withheld the above-described matters from her.

31. The child abuse being committed upon Joshua DeShaney continued throughout the entire period of time he was in the custody of Randy DeShaney, during all of

which time period the Defendants, and each of them, were under a legal duty and obligation to protect him and provide and promote his welfare and wellbeing.

32. On or about March 7, 1984, Defendant Ann Kemmeter made a surprise visit to the Randy DeShaney home for the purpose of checking the condition of Joshua DeShaney.

33. At such time she was told by Randy DeShaney that Joshua had "the flu," and that Randy DeShaney preferred that Joshua not be disturbed.

34. Defendant Ann Kemmeter thereupon departed, without seeing Joshua or determining his condition.

35. On or about March 7, 1983 [sic], either before or after the visit described immediately above, Defendant Randy DeShaney brutally battered, assaulted and abused Joshua DeShaney.

36. On March 8, 1984, Joshua DeShaney was taken to a local hospital by Randy DeShaney, where he was seen to be profoundly injured, having suffered multiple abrasions, lacerations, edemas, ecchymoses, skull fractures, brain damage and diverse other physical, mental and emotional injury.

37. The Defendants, and each of them, failed and omitted properly to supervise, protect, and provide and promote the welfare of Joshua DeShaney.

38. The Defendant Winnebago County and the Defendant Winnebago County Department of Social Services promulgated and followed policies and practices in

violation of applicable federal and state laws, and failed to establish specific and written policies and practices despite the statutory duty to establish and follow the same, but rather abandoned these responsibilities and delegated the policy-making and decision-making functions to the individual defendants herein.

39. The Defendant Wisconsin Department of Health and Social Services failed to discover, report, give notice of and correct the said failures of the Winnebago County Department of Social Services, despite its duty to do so, despite its performance of periodic reviews and audits of said Department, and despite its obligations under federal and state law.

40. At all relevant times the policy, custom and practice of the Defendants Winnebago County, Winnebago County Department of Social Services, Wisconsin Department of Health and Social Services, and the State of Wisconsin were to delegate to the individual defendants herein, and each of them, the authority, power, right and responsibility to make decisions and take actions for and on behalf of the said public entities, both with respect to individual welfare and child protection cases and with respect to general welfare and child protection matters.

41. The said public defendants, and each of them, did in fact delegate to the individual defendants herein, and each of them, such authority, power, right and responsibility as described immediately above.

42. The said public defendants, and each of them, authorized, approved, ratified, condoned and adopted the decisions, actions and omissions of the individual defendants herein, and each of them, and made and constituted such decisions, actions and omissions of the individual defendants herein, and each of them, as their own.

43. The policies, decisions, actions and omissions of the Public Defendants herein, and each of them, violated the accepted standards of good practice in the fields of social work and child protection, and violated applicable federal and state statutes, laws and regulations.

44. The policies, decisions, actions and omissions of the Public Defendants were made and taken knowingly, intentionally, carelessly, negligently, willfully, recklessly, and with indifference to and disregard of the known dangers to Joshua DeShaney and of the civi rights of both Plaintiffs herein.

45. The policies, decisions, actions and omissions of the Public Defendants, and each of them, were not taken in good faith, but rather were taken under the circumstances described immediately above and were, by both subjective and objective norms, taken not in good faith.

46. Each and all of the policies, decisions, actions and omissions of the Public Defendants herein, and each of them, were made and taken under and pursuant to the color of state law, including without limitation Sec. 48.891 Wis. Stats., 1981-1982.

47. The acts and omissions of the individual defendants Rivetz, Kemmeter and Stelse were committed by them, and each of them, while acting in the scope of their employment and carrying out their duties as an officer or employee of their respective public entity employers.

48. As a direct and proximate result of the foregoing facts and circumstances, the civil rights of Joshua DeShaney have been violated, and he has been utterly deprived of his civil rights, including without limitation his right to ordered liberty; his right to freedom from physcal attack and abuse; his right to personal safety, health and security in his person; his right to live and to exist; his right to live and exist as a normal human being; his right to a family or child-parent relationship with his mother and the other members of his extended family; his right to privacy; his right to engage in the common activities and occupations of life; his right to grow and develop; his right to maintain personal relationships, to marry and to have children; his right to freedom from bodily restraint; his right to contract; his right to learn, become educated according to his abilities and acquire wisdom and knowledge; his right to live in a place and manner of his choosing; his right to hearings, notice, confrontation, representation and the due process of law; his rights and privileges under the common law; and other and diverse rights and privileges, all as secured by the Constitution of the United States, and particularly the First, Fourth, Fifth, Eighth and Fourteenth Amendments thereto, and by the provisions of 42 United States Code 1983, 1985 and 1988.

49. As a direct and proximate result of the foregoing facts and circumstances, the civil rights of Plaintiff Melody DeShaney have been violated and she has been deprived of her civil rights, including without limitation her right to maintain her parent-child relationship with her son, Joshua DeShaney, and her right to do so in a

normal manner; her right to establish, reestablish and maintain a family relationship with Joshua DeShaney; her right to communicate with her son Joshua DeShaney; her right to hearings, notice, confrontation, representation and the due process of law; her rights and privileges under the common law; and other and diverse rights and privileges, as secured by the Constitution of the United States and particularly the First, Fourth, Fifth, Eighth and Fourteenth Amendments thereto, and by the provisions of 42 United States Code 1983, 1985 and 1988.

50. As a direct and proximate result of the foregoing facts and circumstances Joshua DeShaney has been severely and permanently injured; he has suffered multiple abrasions, lacerations, edemas, ecchymoses, skull fractures and brain damage; he has been severely and permanently injured physically, emotionally and mentally; he is permanently and profoundly brain injured and retarded, and is utterly and totally disabled, immobilized, rendered incapable of meaningful communication, and deprived of all normal human cognitive, physical and emotional capacities; he has required and received extensive medical, hospital and nursing care and attention, and attendant and supportive care and attention, and physical, speech, emotional and occupational therapies, and will require such care throughout his lifetime; he has suffered extreme pain and suffering, loss and diminution of the enjoyment of life, loss of income and the capacity to earn income throughout his lifetime; he has incurred, and will for his entire lifetime incur, huge expenses in connection with the furnishing of such required care.

51. As a direct and proximate result of the foregoing facts and circumstances Plaintiff Melody DeShaney has suffered severe physical, emotional and psychic injuries, and has required and received medical, hospital, nursing, psychiatric and psychological care and attention, and has incurred substantial expense therefor, and will for an indefinite length of time in the future and perhaps permanently continue to require such care and attention, and to incur expense therefor; she has suffered extreme mental and emotional harm; and has otherwise and generally been seriously injured.

52. The Defendant Winnebago County and the Defendant State of Wisconsin are liable to pay to the Plaintiffs any judgment obtained herein against the individual defendants Rivetz, Kemmeter and Stelse resulting from acts or omissions committed by said individual defendants, within the scope of their employment while carrying out their duties as an officer or employee, pursuant to Sec. 895.46, Wis. Stats.

53. By reason of the foregoing facts and circumstances the Public Defendants, and each of them, did violate the civil rights of each of the Plaintiffs.

54. By reason of the foregoing facts and circumstances Plaintiffs, and each of them, are entitled to judgment against the Defendants, and each of them, jointly and severally, in the amount of Fifty Million dollars ($50,000,000.00) as actual, general and compensatory damages.

SECOND CAUSE OF ACTION

55. Plaintiffs reiterate every allegation above made, as if here set forth at length and in full.

56. By reason of the foregoing facts and circumstances Defendants, and each of them, did negligently violate the civil rights of each of the Plaintiffs.

THIRD CAUSE OF ACTION

57. Plaintiffs reiterate every allegation above made, as if here set forth at length and in full.

58. By reason of the foregoing facts and circumstances, Defendants, and each of them, intentionally did harm to each of the Plaintiffs and thereby committed intentional tort upon each of the Plaintiffs.

FOURTH CAUSE OF ACTION

59. Plaintiffs reiterate every allegation above made, as if here set forth at length and in full.

60. By reason of the foregoing facts and circumstances Defendants, and each of them, did negligently harm each of the Plaintiffs.

FIFTH CAUSE OF ACTION

61. Plaintiffs reiterate every allegation above made, as if here set forth at length and in full.

62. The actions, omissions, recklessness, misconduct, indifference, willful disregard of the rights, safety and wellbeing of the Plaintiffs, and intentional misconduct of the Defendants, and each of them, are so extreme, bizarre, unjustifiable, unwarranted and utterly unacceptable in a civilized society as to warrant—and indeed demand—the imposition of punitive and exemplary damages, both to punish these Defendants for their misconduct in this case

and to deter these Defendants and others similarly situated from repeating or continuing in similar misconduct in the future as to other persons and other minor children entrusted to their care.

63. By reason of the foregoing facts and circumstances Defendants, and each of them, are obligated to pay punitive or exemplary damages in the further amount of Fifty Million Dollars ($50,000,000.00).

WHEREFORE Plaintiffs pray this Court to accept and retain jurisdiction of this matter until its completion; award judgment to the Plaintiffs, and each of them, against the Defendant jointly and severally for general and compensatory damages in the amount of Fifty Million dollars ($50,000,000.00) and further for punitive or exemplary damages in the separate and additional amount of Fifty Million Dollars ($50,000,000.00); award to Plaintiffs the costs, expenses and disbursement of this action, including reasonable attorneys' fees pursuant to 42 U.S.C. 1988; and grant to Plaintiffs such additional and further relief as may be just and proper.

DATED this 4th day of March, 1985, at Milwaukee, Wisconsin.

JOSHUA DESHANEY and
MELODY DESHANEY, Plaintiff

By: /s/ Curry First
/s/ Donald J. Sullivan

Curry First, Esq.
Guardian ad Litem and
Attorney for Plaintiff
1219 North Cass Street
Milwaukee, WI 53202
(414) 272-7400

Donald J. Sullivan, Esq.
Attorney for Plaintiff
P.O. Box 1854
Cheyenne, WY 82003

JURY DEMAND

Plaintiffs, by their counsel, hereby demand a trial by a jury of six (6) persons of all issues in this action.

Curry First, Esq.
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOSHUA DESHANEY, a Minor,
by His Guardian ad Litem,
Curry First, Esq., and
MELODY DESHANEY,

Plaintiffs,

-vs-

WINNEBAGO COUNTY DEPARTMENT OF SOCIAL SERVICES, WINNEBAGO COUNTY, THE STATE OF WISCONSIN and WISCONSIN DEPARTMENT OF HEALTH & SOCIAL SERVICES, LINDA RIVETZ, ANN KENMETER, CHERYL STELSE and RANDY DESHANEY,

Defendants.

ANSWER

Case No.
85-C-0310

Now come the defendants, Winnebago County Department of Social Services, Winnebago County, Ann Kenmeter and Cheryl Stelse, by their attorneys, Simarski & Stack, Ltd., and for Answer to plaintiff's Complaint, deny, allege and show to the Court as follows:

1. Answering Paragraph 1, deny that plaintiffs' action arises under the due process and equal protection

clauses of the United States Constitution; deny that the relief sought is authorized by Title 42 of the United States Code, Sections 1983, 1985 and 1988 or by the due process and equal protection clauses of the United States Constitution.

2. Answering Paragraphs 2 and 3 of plaintiffs' Complaint, deny knowledge and information sufficient to form a belief as to the truth of the allegations contained therein and put the plaintiffs to their proof thereon.

3. Answering Paragraph 9, deny that the defendant, Ann Kenmeter, was "directly responsible" for the infant plaintiff, Joshua DeShaney, as alleged.

4. Answering Paragraph 10, deny that the defendant, Cheryl Stelse, was "responsible for overseeing the care" of the infant plaintiff, Joshua DeShaney, as alleged.

5. Answering Paragraph 15, upon information and belief, deny that a Notice of Injury and Claim was properly served on the defendants, Winnebago County Department of Social Services and Ann Kenmeter, as alleged.

6. Answering Paragraph 16, deny knowledge and information sufficient to form a belief as to the truth of the allegations contained therein.

7. Answering Paragraph 17, deny that the defendant, Randy DeShaney, "repeatedly battered, assaulted and abused Joshua DeShaney, physically, mentally and emotionally" as alleged.

8. Answering Paragraph 18, deny that Chris DeShaney reported to the answering defendants during the years 1982 or 1983 the allegations contained within Paragraph 17 of plaintiffs' Complaint.

9. Answering Paragraph 19, admit that the incident of November 30, 1983 was reported to the Winnebago County Department of Social Services; deny that Dr. T. L. Bowers, M.D. reported to these answering defendants a "diagnosis" of "child abuse."

10. Answering Paragraph 20, admit that the Oshkosh Police Department responded to complaint calls on the dates set forth in Paragraph 20 of plaintiffs' Complaint; deny that said complaints all involved "family violence" as alleged.

11. Answering Paragraph 21, allege a lack of sufficient knowledge and information to form a belief concerning the truth of the allegations contained therein and therefore deny same.

12. Answering Paragraph 22, deny that these answering defendants "knew or by the exercise of even slight care reasonably should have known" of the facts and circumstances alleged by the plaintiff; further deny that answering defendants "knew or by the exercise of even slight care reasonably should have known" of the alleged "strong likelihood and great danger of child abuse being committed upon Joshua DeShaney."

13. Answering Paragraph 23, deny all of the allegations set forth therein; further move to strike Paragraph 23 as setting forth a conclusion of law.

14. Answering Paragraph 24, deny that these answering defendants "undertook" to supervise, monitor, oversee and promote the care, welfare, safety and well being of Joshua DeShaney as alleged.

15. Answering Paragraph 25, deny that these answering defendants caused Joshua DeShaney to be removed from the custody of Randy DeShaney as alleged.

16. Answering Paragraph 26, deny that these answering defendants subsequently caused and permitted Joshua DeShaney to be taken out of protective placement and returned to the custody of Randy DeShaney as alleged.

17. Answering Paragraph 27, deny that these answering defendants in any way actively concealed and withheld from the plaintiff, Melody DeShaney, knowledge and information concerning any of the five areas set forth in Paragraph 27 and therefore deny Paragraph 27 in its entirety.

18. Answering Paragraph 28, allege insufficient information and knowledge to form a belief as to the allegations set forth therein and therefore deny same.

19. Answering Paragraph 29, deny that these answering defendants knew the location, address and telephone number of the plaintiff, Melody DeShaney, at all relevant times.

20. Answering Paragraph 30, deny all of the allegations set forth therein in their entirety.

21. Answering Paragraph 31, deny that the alleged "child abuse" continued throughout the entire period of time Joshua DeShaney was in the custody of Randy DeShaney; deny that answering defendants were under a "legal duty and obligation" to protect Joshua DeShaney and to provide and promote his welfare and well being; further move to strike the latter allegation in Paragraph 31 as setting forth a conclusion of law.

22. Answering Paragraph 35, allege a lack of sufficient information and knowledge to form a belief as to the allegations set forth therein and therefore deny same.

23. Answering Paragraph 36, allege a lack of sufficient knowledge and information to form a belief as to the allegations contained therein and therefore deny same.

24. Answering Paragraph 37, deny that these answering defendants failed and omitted to properly supervise, protect and provide and promote the welfare of Joshua DeShaney as alleged.

25. Answering Paragraph 38, deny that defendants, Winnebago County and Winnebago County Department of Social Services, promulgated and followed policies and practices in violation of applicable State laws; further deny that said defendants failed to establish specific and written policies and practices; deny any statutory duty to establish and follow such written policies and practices; deny that said defendants abandoned any responsibilities; further deny that said defendants delegated the "policy-making and decision functions" to the individual defendants as alleged.

26. Answering Paragraph 39, deny any "failures" as alleged against the defendant, Winnebago County Department of Social Services.

27. Answering Paragraph 40, deny that it was the "policy, custom and practice" of the defendants, Winnebago County and Winnebago County Department of Social Services, to delegate to the individual defendants the "authority, power, right and responsibility to make decisions and to take actions for and on behalf of" said

defendants with respect to "individual welfare and child protection cases and with respect to general welfare and child protection matters."

28. Answering Paragraph 41, deny that the defendants, Winnebago County and Winnebago County Department of Social Services, "did in fact delegate to the individual defendants" the "authority, power, right and responsibility" as alleged.

29. Answering Paragraph 42, deny that the defendants, Winnebago County and Winnebago County Department of Social Services, "authorized, approved, ratified, condoned and adopted the decisions, actions and omissions of the individual defendants" as alleged, further deny that the defendants, Winnebago County and Winnebago County Department of Social Services, "made and constituted" such decisions, actions and omissions of the individual defendants as their own as alleged.

30. Answering Paragraph 43, deny any omissions on behalf of defendants, Ann Kenmeter and Cheryl Stelse; further deny that any alleged policies, decisions, actions and omissions of the public defendants "violated the accepted standards of good practice in the fields of social work and child protection;" further deny that the alleged policies, decisions, actions and omissions of the public defendants violated applicable Federal and State Statutes, Laws and Regulations.

31. Answering Paragraph 44, deny any omissions on behalf of defendants, Ann Kenmeter and Cheyl Stelse; further deny that any alleged policies, decisions, actions and omissions of the public defendants were taken "know-

ingly, carelessly, negligently, willfully, recklessly and with indifference to and disregard of the known dangers to Joshua DeShaney and of the civil rights'' of the plaintiffs.

32. Answering Paragraph 45, deny any omissions on behalf of defendants, Ann Kenmeter and Cheyl Stelse; deny that any alleged policies, decisions, actions and omissions of the public defendants ''were not taken in good faith'' as alleged; further deny that the alleged policies, decisions, actions and omissions of the public defendants were taken under the circumstances previously described in plaintiffs' Complaint; affirmatively show to the Court that any alleged policies, decisions, actions or omissions of the public defendants, Ann Kenmeter and Cheryl Stelse, were within the good faith exercise of governmental authority.

33. Answering Paragraph 46, deny any omissions on behalf of the defendant, Ann Kenmeter and Cheyl Stelse; further deny that any alleged policies, decisions, actions and omissions were ''taken under and pursuant to color of State law, including without limitation Section 48.891 Wisconsin Statutes, 1981-1982'' as alleged.

34. Answering Paragraph 47, deny any acts and or omissions on behalf of defendants, Ann Kenmeter and Cheryl Stelse as alleged.

35. Answering Paragraph 48, deny all of the allegations of Paragraph 48 in their entirety.

36. Answering Paragraph 49, deny all of the allegations of Paragraph 49 in their entirety.

37. Answering Paragraph 50, deny all the allegations of Paragraph 50 in their entirety.

38. Answering Paragraph 51, deny all of the allegations of said Paragraph in their entirety.

39. Answering Paragraph 52, deny that the defendant, Winnebago County, is liable to pay to the plaintiffs any Judgment obtained against the individual defendant, Linda Rivetz; further deny that Section 895.46 Wisconsin Statutes, requires defendant, Winnebago County, to pay the plaintiffs any Judgment obtained against the individual defendants, Ann Kenmeter and Cheryl Stelse as alleged; and affirmatively show to the Court that said Wisconsin Statute requires the State and political subdivisions thereof to pay Judgments taken against officers if the defendant in any action or special proceeding is a public officer or employee and is pursued against in an official capacity or is proceeded against as an individual because of acts committed while carrying out duties as an officer or employee and the jury or the Court finds that the defendant was acting within the scope of employment, the Judgment as to damages and costs entered against the officer or employee in excess of any insurance applicable to the officer or employee is to be paid by the State or political subdivision of which the defendant is an officer or employee.

40. Answering Paragraph 53, deny that defendants, Winnebago County and Winnebago County Department of Social Services, in any way violated the civil rights of the plaintiff.

41. Answering Paragraph 54, deny that the plaintiffs are entitled to Judgment against these answering defendants in the amount of Fifty Million ($50,000,000.00)

Dollars as actual, general and compensatory damages or in any other amount.

ANSWER TO "SECOND CAUSE OF ACTION"

42. Answering Paragraph 55, incorporate herein by reference as if fully set forth Paragraphs 1 through 41 of the Answer of the defendants, Winnebago County, Winnebago County Department of Social Services, Ann Kenmeter and Cheryl Stelse.

43. Answering Paragraph 56, deny the "foregoing facts and circumstances" as alleged; deny that these answering defendants in any way negligently violated the civil rights of the plaintiffs; deny any violation of civil rights of the plaintiffs; deny any violation of civil rights of the plaintiffs [sic].

ANSWER TO "THIRD CAUSE OF ACTION"

44. Answering Paragraph 57, incorporate herein by reference as if fully set forth Paragraphs 1 through 43 of the Answer of defendants, Winnebago County, Winnebago County Department of Social Services, Ann Kenmeter and Cheryl Stelse.

45. Answering Paragraph 58, deny the "foregoing facts and circumstances" as alleged; deny that these answering defendants in any way intentionally did harm to each of the plaintiffs; further deny that these answering defendants in any way committed an intentional tort upon the plaintiffs.

ANSWER TO "FOURTH CAUSE OF ACTION"

46. Answering Paragraph 59, incorporate herein by refernce as if fully set forth, Paragraphs 1 through 45 of the Answer of the defendants, Winnebago County, Winnebago County Department of Social Services, Ann Kenmeter and Cheryl Stelse.

47. Answering Paragraph 60, deny the "foregoing facts and circumstances" as alleged; deny that these answering defendants were negligent in any manner; deny that these answering defendants negligently harmed the plaintiffs as alleged.

ANSWER TO "FIFTH CAUSE OF ACTION"

48. Answering Paragraph 61, incorporate herein by reference as if fully set forth, Paragraphs 1 through 47 of the Answer of the defendants, Winnebago County, Winnebago County Department of Social Services, Ann Kenmeter and Cheryl Stelse.

49. Answering Paragraph 62, deny the "actions, omissions, recklessness, misconduct, indifference" alleged against these answering defendants; deny any "willful disregard of the rights, safety and wellbeing of the plaintiffs;" deny any "intentional misconduct;" deny that the plaintiffs are entitled to "punitive and exemplary damages" as alleged; deny any misconduct; therefore deny all allegations of Paragraph 62.

50. Answering Paragraph 63, deny the 'foregoing facts and circumstances" as alleged; deny that these answering defendants are obligated to pay "punitive or exemplary damages;" deny that plaintiffs are entitled to "punitive or exemplary damages" as alleged.

AFFIRMATIVE DEFENSES

Now come the defendants, Winnebago County, Winnebago County Department of Social Services, Ann Kenmeter and Cheryl Stelse, by their attorneys, Simarski & Stack, Ltd., and for Affirmative Defenses to the Complaint of the plaintiffs, state as follows:

1. That plaintiffs' Complaint fails to state a claim upon which relief can be granted.

2. That the actions taken by the defendants, Ann Kenmeter and Cheryl Stelse, were within the good faith exercise of governmental authority and that the defense of qualified individual immunity is applicable to said defendants.

3. To the extent that plaintiffs' Complaint attempts to state a cause of action for punitive damages, plaintiffs have failed to state a cause of action for such damages.

4. That these answering defendants raise by way of Affirmative Defenses, each and every provision of the Wisconsin Statutes pertaining to claims against governmental bodies, officers and employees as if fully set forth herein including but not limited to the provisions of the Wisconsin Statutes Section 893.80 limiting the amount and extent of damages, if any, recoverable by the plaintiffs.

5. Upon information and belief, plaintiffs have failed to mitigate their damages, if any.

WHEREFORE, defendants, Winnebago County, Winnebago County Department of Social Services, Ann Kenmeter and Cheryl Stelse, demand Judgment dismissing the

Complaint of the plaintiffs on its merits together with costs and disbursements in defense of same.

Dated at Milwaukee, Wisconsin this 26th day of March, 1985.

SIMARSKI & STACK, LTD.

/s/ By: Mark J. Mingo

/s/ By: Wayne M. Yankala

Attorneys for Defendants, Winnebago County, Winnebago County Department of Social Services, Ann Kenmeter and Cheryl Stelse

P.O. ADDRESS

611 North Broadway
Milwaukee, Wisconsin 53202
(414) 273-7400

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

(Caption omitted in printing)

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AND/OR FOR JUDGMENT ON THE PLEADINGS

Defendants, Winnebago County Department of Social Services, Winnebago County, Ann Kemmeter and Cheryl Stelse, by their attorneys, Simarski & Stack, Ltd., by Mark J. Mingo, move the Court pursuant to Rule 12(b)(6) and Rule 12(c) of the Federal Rules of Civil Procedure to Dismiss plaintiff's Complaint for failure to state a claim upon which relief can be granted and/or for Judgment on the pleadings.

This Motion is based upon the Brief accompanying this Motion together with the pleadings presently filed with the Court.

Dated at Milwaukee, Wisconsin this 22nd day of October, 1985.

SIMARSKI & STACK, LTD.

By: _____
MARK J. MINGO

Attorneys for Defendants
Winnebago County Department
of Social Services, Winnebago
County, Ann Kemmeter and
Cheryl Stelse

P.O. ADDRESS

611 North Broadway
Milwaukee, Wisconsin 53202
(414) 273-7400

(Certificate of service omitted in printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
(Caption omitted in printing)

AFFIDAVIT

State of Wisconsin)
) ss.
Milwaukee County)

MARK J. MINGO being duly sworn on oath deposes and states as follows:

1. That he is an attorney licensed to practice law in the State of Wisconsin and is associated with the law firm of Simarski & Stack, Ltd. attorneys for defendants, Winnebago County Department of Social Services, Winnebago County, Ann Kemmeter and Cheryl Stelse, in the above-referenced action.

2. That on August 27, 1985, August 28, 1985, August 29, 1985, October 1, 1985 and October 3, 1985 plaintiffs' counsel conducted the deposition of the defendant, Ann Kemmeter; that attached hereto and marked as "Exhibit A" are excerpts from said deposition which are incorporated herein by reference as if fully set forth.

3. That on September 10, 1985, the deposition of Thomas R. Hoare was conducted; that attached hereto and marked as "Exhibit B" are excerpts from said deposition which are incorporated herein by reference as if fully set forth.

4. That on September 12, 1985, the deposition of Keith L. Nelson was conducted; that attached hereto and marked as "Exhibit C" are excerpts from said deposition

which are incorporated herein by reference as if fully set forth.

5. That on October 24, 1985, and October 25, 1985, the deposition of the plaintiff, Melody DeShaney, was conducted; that attached hereto and marked as "Exhibit D" are excerpts from said deposition which are incorporated herein by reference as if fully set forth; also attached hereto is a true and accurate copy of "Exhibit A" from said deposition which is attached to this Affidavit and marked as "Exhibit E," and is incorporated herein by reference as if fully set forth.

That all of the above depositions were taken in relation to the above litigation and that the excerpts therefrom incorporated into this Affidavit are being filed with the Court in support of the Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and/or For Judgment on the Pleadings previously filed by the defendants, Winnebago County Department of Social Services, Winnebago County, Ann Kemmeter and Cheryl Stelse.

Dated at Milwaukee, Wisconsin this 2nd day of December, 1985.

/s/ Mark J. Mingo
(Jurat omitted in printing)

EXHIBIT A

(p. 3) PROCEEDINGS

ANN KEMMETER, called as a witness herein by the Plaintiffs, after having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. SULLIVAN:

Q What is the correct pronunciation of your name?

A Ann Kemmeter.

Q And that's spelled K-e-m-m-e-t-e-r?

A Correct.

Q We have a small room and a big air conditioner. Can you hear me okay?

A So far.

Q If at any point today or any point during your deposition you can't hear me, will you tell me so I can talk louder and make sure you can hear me?

A Yes, I will.

Q And if at any point you don't understand what I'm asking you, will you tell me so I can ask it better?

A Yes, I will.

Q What understanding do you have of the purpose of a deposition such as what're doing today?

A My understanding of the deposition today is that I will be testifying as to my involvement with the DeShaney case as to what happened.

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(p. 34) had contact with Randy DeShaney.

Q Why wasn't this case given to Mr. Donner?

A The incident of January 22nd, 1983, occurred on a weekend. On a weekend we do not have anyone necessarily on call, but the police and/or hospital go through help line.

Because I happen to live in Neenah, sometimes they will call me direct, knowing that I am—or I was a child protective service worker at that time.

So in this event, if I recall correctly, Tom Hoare, the hospital social worker, called me directly at home. I was home, I responded immediately.

Q Physically where is Theda Clark?

A Theda Clark is located at 130 2nd Street in the City of Neenah.

Q When it got to be Monday and back to the normal workweek, why did the case become your case instead of becoming Mr. Donner's case?

A I had already made my initial contact, therefore, there was no reason for a change of workers.

Q Was Mr. Donner still with the department at that time?

A Yes.

Q Is he still now?

A Yes, he is.

Q Did you—As part of doing your workup, did you look at (p. 35) the existing—existing file? I realize it wasn't as big as what you have there, but did you look at the file that had already been created about Joshua?

A As of January 24th?

Q Right.

A No.

Q Did you ever look at the file that was already in existence?

A Eventually I did.

Q Okay. That's something you'd normally do, isn't it?

A Essentially, yes. That was not a point in issue at that point in time. The point was this child was hospitalized, and we needed to carry on with the present ongoing investigation.

Q When did you look at the existing materials in the Joshua DeShaney file?

A I don't recall.

Q Well, was it pretty early in the process, or was it a year later?

A It was within a reasonable time. If another initial contact sheet is completed, a cross-reference is done within the agency to determine if there were any other contacts

with the family. The record is then compiled, put together, and forwarded to me.

Q And the reason for that cross-checking, cross-indexes and

* * *

(p. 47) Chris?

A It's in Christine's name. It states the same thing, marriage assessment group, dash, Chapter 247.081 (Section 1). Assessment reads certified to family court commissioner.

Q And the fourth one is dated January 22 of '83?

A Correct. Precipitating situation states that Joshua's Aunt, Marie DeShaney, brought him into Theda Clark Regional Medical Center because of numerous, unexplained bruises over entire body. It was alleged that he was hit with a toy truck by a two year old.

Temporary physical custody was given over to Theda Clark Regional Medical Center for an investigation to be done because of the child's numerous bruises. Parties were interviewed, and the child protection team meeting was held at Theda Clark Regional Medical Center on January 25th, 1983. Joshua remains a patient on the pediatric ward of Theda Clark Regional Medical Center.

Q I take it from the last sentence or two that you just read from this particular initial contact sheet that at least part of it was filled out after the follow-up activities were conducted?

A This was the initial contact sheet to open the case immediately.

Q Perhaps I misunderstood. Didn't you just read something

* * *

(p. 56) that question.

Q Well, let me put the question to you this way. What you just testified to, I think, was that if your department is contacted directly by the hospital personnel, whether it's an ER nurse or a social worker, whatever, if you department was contacted directly by the hospital personnel about what may be a child abuse situation, then the policy is that you have a child protective team meeting; am I understanding you rightly so far?

A Right.

Q And then you said that the team meeting consists of medical people who have knowledge of the situation, the caseworker, the assistant corporation counsel, who else?

A I believe I stated law enforcement, nursing staff.

Q Now, is that—is it your testimony that you don't know whether someplace in these big blue books there's a written down rule about these team meetings; you don't know whether it's written down or not?

A No.

Q And is that the reason you say that Cheryl Stelse would be in a better position to tell us about that rule?

A Yes.

Q Okay. As a working caseworker, is it your understanding that that's the practice that's expected to be followed in your department, whether it's written down or not

* * *

(p. 61) not safe in their home environment.

If there was evidence that this child had suffered severe injuries or was not safe in their home, we would request temporary physical custody of the child for placement outside of the home till the matter could be heard in juvenile court.

If we felt that the child could remain in the home, that the situation could be rectified within the home, we could offer casework services, offer community resources to assist the parents. We could or could not, depending upon the assessment, still request court jurisdiction for placement of that child within his home, but then it would be mandated services that the department remain involved with the family.

Q Okay. Now, those are a range of options and decisions that can be selected, right?

A Right.

Q Okay. Who's supposed to make those determinations, and who's supposed to select those options?

A With the information that we gather, if we feel that there is strong evidence that this child may be in danger, we contact the assistant corporation counsel, in this case John Bodnar, Winnebago County, have him review the information with us.

We may involve the juvenile court intake (p. 62) worker to also review the information with Mr. Bodnar, at which time he determines whether or not there is enough evidence for this matter to be brought before juvenile court.

Q Well, back up. Who makes the determination initially as to whether it's safe or not safe for the child to remain in the home?

A This is, again, going to be contingent upon the professionals that are involved at that particular point of time.

If we are in the emergency room of a hospital, it may be the physicians, it may be the nursing staff, the hospital social worker, my input, law enforcement's input.

If we were in a school, it may be a discussion between the school authorities, perhaps the reporter, depending upon who he is, the department, law enforcement. We're trying to gather and use the expertise of those individuals involved in the situation to help make that determination.

Q Who makes the determination?

A It is a consensus of us at that point.

Q Does the teacher—Does the teacher get a vote?

A We don't vote. He or she has input into our discussion to determine, yes.

(p. 63) Q Now, is the deal that you, as the caseworker, go see the teacher or you go see the cop who investigated or you go see whoever else knows about things?

A Often law enforcement goes with us.

Q Do you go to see these people, or do you wait until you can schedule a group meeting at everybody's convenience?

A No, we go to see them.

Q You go to see them?

A I go to see them.

Q And you listen to what all the informed people have to contribute?

A. Yes.

Q And then when you've gathered up those pieces of information and input, what do you do with them?

A I would make a determination as to whether or not, from the information that these professionals have given me, as to whether or not this child is safe in the environment, whether I need to contact juvenile court intake for temporary physical custody order, and then subsequently contact our assistant corporation counsel for further proceedings.

Q And you make that determination—And you make that determination on the basis of all the information you've been able to pull together?

A That's correct.

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EXHIBIT B

(p. 3) TRANSCRIPT OF PROCEEDINGS

THOMAS R. HOARE, called as a witness herein by the Defendants, having been first sworn, was examined, and testified as follows:

EXAMINATION

BY MR. MINGO:

Q Would you state your name for the record and spell your last name, please?

A Thomas R. Hoare, H-O-A-R-E.

Q What's your age, sir?

A 43.

Q Where do you reside?

A 1490 Breezewood Lane, Neenah, Wisconsin.

Q Are you employed at the present time?

A Yes, I am.

Q And where are you employed?

A At Theda Clark Regional Medical Center in Neenah.

Q In what capacity?

A Medical social worker.

Q And would you—How long have you been employed as a medical social worker at Theda Clark?

A Approximately seven and-a-half years.

Q Have your duties and responsibilities over that seven and-a-half year period been basically the same?

A Yes, they have.

(p. 4) Q And would you describe for us at this time what your duties and responsibilities as social worker entail?

A You want the total or just pertaining to the situation?

Q Well, why don't we try with this situation and see how you do?

A Okay. Part of my responsibilities is to the emergency room at Theda Clark, and I am the coordinator of what's called the child protection team, and therefore, automatically we receive any referrals regarding possible child abuse, spouse abuse, people who come to the hospital with injuries other than by accidental means.

Q Does that mean that everytime an individual enters the hospital where there's a suspicion of child abuse you will be notified of that?

A Yes, it does.

Q Would you give me a brief history of your educational background, please?

A Graduated from Wisconsin State University of Oshkosh in 1964 with a bachelors degree, a major in social work and psychology, and I have 15 credits towards my masters degree in social work from the University of Wisconsin Extension Center.

I have attended numerous in-service training seminars, et cetera, on various forms of social work including child abuse, child neglect detection.

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(p. 10) protection team regarding Joshua on December 25, 1983.

Q Could you explain to me how that summary is prepared?

A For the record I perhaps should explain what the child protection team is.

Q I was going to get to that in a minute. If you'd rather do it now, go ahead.

A It would put things in a better context. The child protection team is a conglomerate of people who are called together to help determine if we feel that we have a child abuse situation and to determine if it's safe for the child to return home, and to make recommendations to the Department of Social Services as to what can be done to alleviate the conditions of abuse that has been caused or improve the family situation of a child.

The child protection team started at Theda Clark probably about, I guess, ten years ago or so, I'd have to look specifically. But for this child protection team we had: Myself; nursing personnel from the emergency room in the pediatric unit; Doctor Robert Gehringer, who is a pediatrician involved; Dr. Donald DeRozier, who is a psychologist; Ann Kemmeter from Winnebago County Department of Social Services; Detective Keith Nelson from the Neenah Police Department; John Bodner, Corporation

Counsel, Winnebago County Department of Social Services; and a secretary from our department (p. 11) who took notes. The purpose—Well, I explained to you what the purpose of the team is.

Q I missed a part of that explanation. You said you try to determine whether or not this is a case of abuse, and you also said you attempt to make recommendations to the Department of Social Services on the future handling of the case, and one other thing that I missed?

A We try to determine if it's safe for the child to return home.

Q Now this particular report concerning the child protection team meeting on Joshua DeShaney was prepared by Joanne Smith, the secretary?

A That's right.

Q How was it—strike that. This isn't a verbatim transcription of what transpired now, is it?

A No, it is not.

Q How is it determined what goes into this report and what doesn't?

A She takes notes and then types up her notes.

Q She's present during the entire meeting, is that it?

A That's right.

Q And she determines what she's going to put into this report and what she's going to leave out without conferring with anyone else?

A Okay. After she does a rough draft of the report, I go (p. 12) over it and then make any corrections or add other things that should go into it.

Q If there are additions or deletions, you'll inform her?

A. That's right.

Q What else do you have there?

A Well, copies of subpoenas. A confidential medical information release form signed by Randy DeShaney and witnessed by Ann Kemmeter allowing Theda Clark Regional Medical Center to release copies of medical records to the Winnebago County Department of Social Services.

Mr. Sullivan: The date, please?

A The date? 1-25-83.

Mr. Sullivan: Thank you.

BY MR. MINGO:

Q Is there an expiration date on that?

A Six months. Not to exceed six months.

Q Okay.

A Okay. Then I have copies of my rough notes that I had taken while I was interviewing the child and the parties that were involved.

Q Does that cover your entire file?

A Yes, it does.

Q I believe you indicated that you were first contacted relative to Joshua DeShaney on January 22, 1983?

A That's true.

(p. 13) Q Who were you contacted by?

A I was called by the nurse at the emergency room.

Q Do you know who that is?

A I think it probably was Ruth Stanke.

Q And what did the nurse relate to you when you were contacted?

A She indicated to me that they had a child there who was approximately three years old and they suspected that the child had been physically abused. She indicated that there were a number of bruises on the child and the child was brought in by an aunt.

Q And you later found out that the Aunt was Marie DeShaney?

A. Right.

Q Was any other information—strike that. You were contacted by telephone; is that right?

A That's right.

Q Was any other information related to you by telephone—

A None.

Q —at that time?

A (witness nods.)

Q What did you do then?

A I went to the emergency room.

Q It's your understanding that this happened on a Saturday or a Sunday?

A If I remember correctly, I think it was a Saturday.

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(p. 16) cage, and then he had a bristle-like brush indication on his buttocks.

Q Are those all the injuries that you at this time recall seeing, or simply something that you're reading off the medical report?

A I recall seeing those.

Q Okay. Now I think you said you were going to refer to a second document as well?

A I did. I referred to both, I'm sorry, my own notes indicating the bristle-like brush on the buttocks.

Q Did you then attempt to make some type of written notation of what you saw after you looked at the child?

A I did not right at that time.

Q What is that sheet that you're just referring to there?

A These are notes that I took after I had sat down and started putting everything together in chronological order. After I had seen the child, talked with Dr. Gehringer, and talked with the caretaker who brought the child in, I proceeded to call Winnebago County Department of Social Services and the Neenah Police Department.

Q Those notes that you're holding in your hands, is that something that you prepared on January 22 of 1983?

A Uh-hum.

Q That's, "yes"?

A Well, it would either be the 22nd or 23rd. It would

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(p. 25) them, showed them Joshua, pointing out the bruises that he had on his body and indicating to them my questions as to how those bruises had gotten there and indicating the different ages of the bruises and also the bristle-type mark on his buttocks.

Q And then you indicated to both Detective Nelson and Ann Kemmeter why you felt the child should be taken into temporary physical custody?

A That's right.

Q And why was that?

A Because I did not feel that it was safe for the child to be released to me. I did not have a history as to really what had happened to this child, and the father was not available to contact to get a history. And if the child was going to be admitted to the hospital, we would either have to have temporary custody of that child to admit the child or have the permission of the parent.

Q And since the parent wasn't around, you couldn't get permission?

A That's right.

Q Now were you responsible for initiating the action to obtain temporary physical custody of the child, or was that a request you made to Ann Kemmeter and she was supposed to follow through with that?

A That was a request made to Ann Kemmeter and she and (p. 26) Detective Nelson followed through with that.

Q Did you have any further contact with anyone involving this case once you spoke with Detective Nelson and Ann Kemmeter on January 22 of 1983?

A None except for Marie.

Q Okay. You had a second interview with Marie?

A No, No, I mean. you said anybody else besides. I had contact with Marie, Ann Kemmeter and Detective Nelson.

Q After you spoke with Ann Kemmeter and Detective Nelson, what did you do next?

A At that point I went up to the pediatric unit and informed the pediatric unit that it was my feeling that Joshua DeShaney was being admitted to the hospital and appraised them that this is a possible child abuse situation and reminded them what it meant, that the child be in protective custody and asked them to be extra sensitive to the interaction between the patient and the parent or caretakers who may have been coming up to see him.

Q Do you recall who you would have spoken to in the pediatric unit?

A I don't recall for sure who I talked to.

Q Before you decided that temporary physical custody should be taken of the child, did you consult with Dr. Gehringer?

* * *

(p. 37) A The only thing that I recall from that is where I learned that there was alcohol in the bottle that the child had when they picked him up from the mother.

Q That's something that Chris DeShaney indicated to you?

A Yes.

Q And I think you said you don't have any notes reflecting that conversation with Chris, do you?

A No, I do not.

Q Do you recall anything else about that conversation?

A None.

Q Did you interview anybody else that day?

A No, I did not.

Q What other involvement did you have with the case on January 24?

A None.

Q Okay. What was the next involvement that you did have?

A Calling a child protection team staffing on January 25, 1983.

Q And how do you go about calling a child team staffing?

A By phone indicating to all the persons involved that we'll be having a child protection team staffing regarding this child, and it usually takes place at noon, because that's when the doctors can be there.

Q And do you more or less coordinate this child protection team meeting?

(p. 38) A That's right.

Q And who determines who the participants in the child protection team meeting will be?

A I am a part of that selection, along with any personnel from County Social Services or doctors who may be requesting the team staffing. In this case all persons who would have been involved with this child or family since the child was admitted to the hospital were asked to participate.

Q Did anyone who was asked to participate refuse to participate?

A Not that I recall.

Q Okay. Now you have that one typewritten page summarizing thhe child protection team meeting?

Mr. Sullivan: Excuse me, I think it's two pages.

Mr. Mingo: Two pages?

A That's true.

BY MR. MINGO:

Q That's dated January 25, 1983?

A That's true.

Q At the top it indicates those present; is that correct?

A That's right.

Q That was yourself, Mary Koslowski?

A That's right.

(p. 39) Q And who is she and why was she there?

A She is an LPN on the pediatric unit at Theda Clark, and she would have been probably having direct contact with Joshua in patient care.

Q Do you recall what, if any, input Mary Kozlowski had with respect to the ultimate consensus or recommendation that was reached at the child protection team meeting?

A No, I do not. Any of the nursing personnel who would have been involved would have indicated the type of relationship they may have seen between the patient and the parents, and I do not recall anything specifically said by her at that time.

Q So you don't really recall what, if any, input Mary Kozlowski had in the child protection team meeting?

A No, I do not.

Q Now Jean Anne Miller, who's she?

A She is an LPN from the emergency room. She would have been in the emergency room when Josh was brought in.

Q Do you recall what, if any, input Ms. Miller would have had?

A None.

Q She had none, or you don't recall?

A I don't recall any.

Q Same question with respect to Kathi Hoss, what involvement, if any, did she have?

(p. 40) A I don't recall her having any input.

Q What about Rosalind Stanke?

A Rosalind Stanke did have input. She was the nurse who originally had called me. By the way, I gave you the wrong name before. I think I said Ruth Stanke, and it is Rosalind. She was the nurse who had originally called me and also was involved in examining the child. She would have been the one who would have indicated that Marie was very hesitant to allow the nurses to strip the child in the emergency room.

Q Now Jean Nolan is an RN at Theda Clark?

A That's true.

Q Do you recall what, if any, involvement Jean Nolan had?

A I believe Jean Nolan was with Rosalind Stanke in the room in examining the child, or in preparing to have the doctor examine the child and stripping down the child.

Q And then Melissa Borth, B-O-R-T-H, is an RN at Theda Clark?

A True, she would be the nurse on pediatrics.

Q Do you recall what, if any, significant input she had into the child protection team meeting?

A I don't believe she had any.

Q What about Mary Armbruster?

A She had patient contact also. She is an LPN on pediatrics. And if I recall, she indicated the type of (p. 41) relationship she saw between the child and the parent.

Q What type of relationship did she indicate she saw?

A Close relationship between Joshua and his father.

Q Of what significance was that to you, if any?

A May I please back up?

Q Sure.

A I remember distinctly one of them saying that whenever Randy would walk into the room, Joshua would come running to him with his arms out wanting to jump up into his arms and be hugged by him, and that there was a good relationship between father and son. That indicates to me that if Joshua is afraid of his father, he would not be doing that.

Q Did that indicate anything to you in terms of whether or not Joshua was, in fact, a child-abused victim?

A No.

Q Okay. Did it indicate to you anything with respect to whether or not Joshua was a victim of child abuse, with that abuse being perpetrated by Randy DeShaney?

A That's where the question comes in. Because of that behavior I would have to question whether Randy was physically abusing his son.

Q And in your experience that's something you wouldn't expect if Randy was, in fact, abusing Joshua at that time?

(p. 42) A That is true.

Q I think you were about to tell me what Mary Armbruster observed in terms of the relationship between Mary and son?

A That there was a good relationship, that she was the one who indicated when Randy would walk in the room Josh would come running to him.

Q And the next individual listed as attending the child protection team meeting is Donald DeRozier, M.D.; is that correct?

A That is true. He is a psychologist.

Q Is he a psychiatrist, as well?

A He is not a psychiatrist, he is a psychologist.

Q And how was it that Dr. DeRozier entered this case?

A He was called in consulation by Dr. Gehringer to do a psychological evaluation on the child.

Q Did he do a psychological evaluation of the father, as well?

A I don't believe he did a full scale psychological evaluation of the father, although he did have an interview with him.

Q Did Dr. DeRozier have any involvement other than the psychological evaluation of the child and a partial evaluation of the father?

A None except for his input with the child protection team.

(p. 43) Q What was his input with respect to the child protection team?

A Dr. DeRozier though that the father and son should stay together and that there should not be another

woman involved in the family situation, and that they should be seen professionally. And he also recommended that the child be involved in a program like Head Start.

Q Do you know what he meant by indicating that the child should be seen professionally?

A Yes. That social worker counseling be set up to work with the father and son. If I remember correctly, Dr. DeRozier's study of the child indicated that the child did have some behavior problems that he needed some help with.

Q Did he recommend that the child be returned to the father?

A Yes.

Q Do you recall any other imput that Dr. DeRozier had into the child protection team meeting?

A No, I do not.

Q Dr. Gehringer is the next person listed as attending the child protection team meeting, and he's a pediatrician at Theda Clark?

A He is a pediatrician who has the right to practice at Theda Clark. He is with Nicolet Clinic.

(p. 44) Q And he is the doctor that examined Joshua when he was brought to the emergency room on January 22?

A That's true.

Q What was Dr. Gehringer's input into the child protection meeting?

A What he had done was described the physical findings of the child when the child was brought into the hospital and the results of the tests that were run on the child.

Q When you indicate that he described the physical findings, does he just read off the face sheet of the emergency room report, or did he tell you something more than that?

A I don't recall if he had his own notes or not.

Q Was he questioned or did he render an opinion as to whether or not he suspected child abuse?

A After everybody had the opportunity to give their input as to what they saw and what areas, there was a discussion. The discussion was, was there abuse? Can we say that abuse took place? If there was abuse, who did the abusing, and what can be done to alleviate the conditions that caused the abuse? There's more to that, more to this than what I'm saying right now.

In looking at all the evidence that was there, John Bodnar, Corporation Counsel for Winnebago County Department of Social Services indicated that he (p. 45) felt that there was not enough physical evidence to take this matter to court to get legal custody of the child for placement or make any other referrals to the Court system.

With that opinion the child protection team then started looking at what would be the best for handling this situation. We could not prove that this was child abuse, but we knew that there was a problem. We had Randy who apparently had indicated to probably Ann Kemmeter or to Keith Nelson that there was a problem.

I know there was a lot of suspicion that Marie possibly/ probably could have been the person who was doing the abusing. Could not prove that. The recommendation of the team was—

Q Can I stop you for a second, we're really getting ahead of ourselves here.

A Okay.

Q I guess my question that started this whole thing was whether or not Dr. Gehringer indicated to the group at the child protection team meeting that he suspected child abuse?

A I believe he did. He suspected child abuse when the child initially came in to the hospital.

Q Was he asked at this child protection team meeting whether or not he suspected child abuse?

(p. 46) A I don't remember.

Q Do you recall anything—strike that. Do you recall any input that Dr. Gehringer had at this team meeting other than to read the physical findings?

A He participated in the discussion.

Q I take it that the discussion followed after everyone had all the initial input that they wished to have?

A That is right.

Q And John Bodnar indicated that he felt that there was not enough evidence to take this case to court, you said, correct?

A That's right.

Q Did he indicate that after everyone had their initial input?

A That is right.

Q Did he indicate that after or before the final discussion you had, or was that part of the final discussion?

A Part of the final discussion.

Q Do you recall what input, if any, Anne Wilson, W-I-L-S-O-N, had?

A No, I do not.

Q What about Ann Kemmeter?

A Ann Kemmeter would have given a brief social history of Joshua DeShaney, Randy DeShaney, and Marie, the three primary persons involved.

(p. 47) Q What input did Detective Keith Nelson have?

A He would have given the physical evidence that he would have obtain [sic] in his investigation.

Q Do you recall what that was?

A No, I do not. I do not have a copy of his report. I remember that he had gone to the house and taken pictures and interviewed neighbors, and things like that, but I don't remember the specifics of his report.

Q Did John Bodnar have any input into this child protection team meeting other than what you've already told us about?

A No.

Q Now as I understand it, after everyone has their initial input, you then have a discussion in an attempt to reach some type of consensus on whether or not there was abuse, and if so, where are you going to go with this case?

A That's right.

Q Who participated in the discussion?

A Anybody who was in the room had the right to participate in that discussion.

Q I understand that, but who actually did?

A I remember that child protection team meeting. I remember Dr. Gehringer and Dr. DeRozier, Ann Kemmeter, Detective Nelson, John Bodnar, I remember them being very much involved in the discussion as trying to make some (p. 48) determination of abuse and legally what grounds we had to stand on.

Q Do you coordinate this discussion?

A Yes, I do.

Q All right. After everyone has their initial input, do you somehow ask yourselves an initial question of whether or not there is abuse?

A Yes.

Q Is that the first question you ask after everyone has the initial input?

A I will probably say to the group, "Can we say that this child has been physically abused."

Q And did you do that in this case?

A I believe I did.

Q And then procedurally how is that handled?

A The parties who are involved give their opinion.

Q Okay. Do you recall who in this case gave their opinion with respect to that question?

A Well, at that point I believe the consensus of opinion was that we have a child that has injuries that we cannot explain, but we also cannot explain how he got the injuries.

Q So you asked yourselves, "Can we say whether or not this child is abused," and the consensus was, "We don't know;" is that what you're telling me?

(p. 49) A I believe so, yes. We honestly can't say the child was abused at this point.

Q I think you said that each participant can voice their opinion with respect to that particular question; is that correct?

A Yes.

Q Do you recall whether or not—or strike that. Do you recall any opinion voiced by any of the specific participants?

A No, I do not, except for John Bodnar's response.

Q And you already told us what that was?

A That's right.

Q Now, after you decided that you really didn't know whether or not you had a case of child abuse here, is there a secondary question you address to the group?

A Following along with the philosophy that we have determining, "Is it safe for the child to return home," or, "What can be done to help the child," some of the information that came out was that Randy had indicated that he wanted some help with his son, and with that type of feeling it was really the recommendation of the team that voluntarily, if Randy would agree, the County Department of Social Services would supervise what was going on in the home, get the help that was needed to try to get the child to a Head Start program. And there was (p. 50) a recommendation to get Marie out of the house, try to get Marie out of the house, understanding that there is no legal way that the Department of Social Services or the Neenah Police Department or anybody else can force her out, it would be up to Randy to ask her to remove herself.

Q So you asked yourselves at that point in time whether or not it was safe, in your opinion, for the child to return home?

A Yes.

Q And was there a consensus of opinion with respect to that question?

A There was a consensus that the child could return home to the father and that there was not evidence to take it to court to remove the child from the home. Without having the evidence to remove the child from the home, what other alternative do you have.

Q Did anyone object to that particular opinion and say, "No, I think the child should be taken from the parent," or, "No, I don't think the child should be returned home"?

A I don't recall anybody voicing their opinion along that line.

Q Did you concur with the group consensus that the child should be returned to the father?

* * *

Exhibit C

(p. 3) PROCEEDINGS

KEITH L. NELSON, called as a witness herein by the Defendants, Winnebago County Department of Social Services, Winnebago County, Ann Kemmeter, and Cheryl Stelse, after having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. MINGO:

Q Would you state your full name for the record, please.

A Keith L. Nelson. Middle initial is L.

Q And what's your age?

A Thirty-nine.

Q Where do you presently reside?

A 610 Chestnut, City of Neenah.

Q And how are you employed at the present time?

A I'm employed by the City of Neenah Police Department in the capacity of patrol officer and detective.

Q Were you employed in that same capacity in January of 1983?

A Yes, I was.

Q What do your daily duties entail as a patrol officer for the City of Neenah?

A As a patrol officer on the afternoon shift or the day shift, our duties are going on emergency calls, writing citations, with the use of radar making speeding—stops

* * *

(p. 8) be in some other file?

A That's possible. I did not look for those today.

Q Okay. What was the first contact you had with Joshua DeShaney?

A Okay. Because of the time that elapsed, I'd like to refer to the complaint.

Q Sure. Feel free to refer to any of the—

A Okay.

Q —documents in that file at any time throughout this deposition.

A Okay. The first time I viewed Joshua DeShaney was on the 22nd of January, 1983, at around 3:55 p.m. in the emergency room.

Q At Theda Clark?

A At Theda Clark Hospital in Neenah.

Q Now, who contacted you?

A Theda Clark Hospital called at the request of Tom Hoare.

Q Would they have talked to you, or would they have talked to a dispatcher?

A They would have talked to a dispatcher first.

Q And then talked to you?

A And then talked to me.

Q And what information was relayed to you by telephone?

A It was—I believe that the dispatcher was requesting a detective to go to the hospital. And I recall that my

* * *

(p. 17) Q So you determined on your own that the surrounding neighbors couldn't see or hear anything; is that basically it, or did you knock on their doors and say, hey, could you see or hear anything with respect to the DeShaney family?

A No, I did not go beyond that building because it didn't seem logical that anyone could possibly hear or see what was going on.

Q Other than the postman that you talked to?

A Right.

Q Then after making your physical examination of Joshua, that's when you proceeded to take the photographs that you've told us about?

A Right.

Mr. Sullivan: Off the record.

(There was discussion off the record.)

BY MR. MINGO:

Q Okay. Then you spoke with Dr. Gehringer and Dan Venee, V-e-n-e-e?

A Yes.

Q And evidently you people agreed that the child's safety was in jeopardy, and temporary physical custody request was made?

A Right. I have children, and I just didn't believe from the marks on this child that it was normal. I have (p. 18) children with bruised up knees. I guess I have to relate to my own understanding of what child abuse could involve.

And my own kids have had bruises on their arms, and they have fallen on their knees, but I couldn't believe that this number of injuries should be normal, whether it was abuse or the child himself had some destructive qualities or problems, and I just felt that definitely he should be—have protection for his safety against whatever is causing this should be removed or monitored.

Q Okay. Did you have any input into whether or not temporary custody was taken of Joshua, or was that decided by the doctor and perhaps the social worker?

A A temporary custody form, the decision to take custody of a child has to be finalized by the Department of Social Services. I—I guess a police officer's opinion can sway what a social worker may do or do not do, but they have to make the final decision as to whether they want to sign that form. A police officer cannot take custody that I know of without their okay.

Q Okay. So it would have been the Department of Social Service worker Ann Kemmeter who made the final decision?

A Yes.

Q What I'm wondering is whether you had any input into that

* * *

(p. 45) because they're not relatives.

A relative is good to get information sometime, and then sometime they are not.

Q Okay.

A If they want to protect someone, they're not good.

Q So the next involvement you had with the case was on January 25th, 1983?

A That's right.

Q And that was at the child protective team meeting?

A At Theda Clark Hospital.

Q And Ann Kemmeter requested that you be present, correct?

A Right.

Q Have you attended—Strike that. Had you attended these type of team meetings in the past?

A No. It was new to me. It was the very first time I had been to a child protective team meeting.

Q Do you remember attending that team meeting?

A Yes, I do.

Q Now, your supplemental report indicates that you gave all information from your report; is that right?

A Yes.

Q Does that mean that you read your report to all the people present, just like you did to us today?

A I don't recall if I read it verbatim, but I do know that I produced the entire copy of what I had and the (p. 46) statements and brought it to the hospital.

And I assumed it was like any other hearing or meeting that everybody, to make a decision, should have all the information that you know of up until that point.

Q Did you orally speak at that meeting?

A I think I did.

Q And what would you have told the people at the team meeting?

A Again, I'll have to refer back to this report.

Q Okay.

A Because that time difference is back then. I attended the child protective team meeting at Theda Clark Hospital. I gave all information from my report. When it was all summarized, the end result from the ten to twelve people involved was that there would not be a specific—there would not be specific charges brought down.

I advised that this situation is in need of close supervision by the Department of Social Services and would hope an ongoing physical surveillance by the hospital and Social Services be started for Joshua.

All of my findings, I could not say, back up a specific charge as well as a hospital's and Department of Social Services'.

* * *

(p. 50) A Yes.

Q So you were working hand-in-hand with the Department of Social Services?

A We almost have to. In these type of cases I don't know how we can't. They sometimes learn things we have to know for a charge, and they back us up, and we have to do the same.

Q And then Joshua was released from temporary physical custody that day; is that correct?

A I'll have to read this again.

Q I'll withdraw the question, okay. I'll ask you another question.

A Okay.

Q Do you recall anything else that took place at this team meeting other than what you just told us about?

A Well, I'm going to have to again refer to the complaint. There may have been, but I can't recall more than I've documented back from that file.

I know—Well, I can say that at the meeting Dr. Gehringer was there and the ER nurse, I believe, was there.

Q Dr. Gehringer's the pediatrician?

A Um-hum.

Q That's yes?

A Yes.

(p. 51) Q Do you remember what Dr. Gehringer had to say at this team meeting?

A I'm going to have to go on—by memory on that.

Q What's your best memory as to what Dr. Gehringer said?

A My best recollection is that he couldn't determine what caused that injury to the forehead but that—here, again, it's just recollection—but there was some type of abrasive or scratching to the surface of the skin like—I don't know if my memory serves me right, but it seems to me there was mention of carpet, like if you would fall head first on a carpet, you'd get a burn from the carpet besides the bruise.

That—That seems to stick in my mind that his determination was that it's possible that the fall could be from like two or three feet up headfirst on to a carpet where not only would the bruise occur, but the skin would be burned or roughed up, abrased.

Q Do you recall anyone else being at the team meeting other than Dr. Gehringer.

A Well, Ann Kemmeter was present.

Q Do you remember a Dr. DeRozier, the clinical psychologist, being there?

A Yes, I do, I think he was.

Q Do you know Dr. DeRozier?

A I don't recall him. I wouldn't know what he looks like.

(p. 52) Q Do you recall anything that Dr. DeRozier said at the team meeting?

A I can't recall anything specific except that it may have had to do with Joshua's psychological setting. I think he had talked about the bruise on the penis. And there, again, I'm just—I'm trying to recall this, and I can't be sure.

Q Do you recall what any of the other participants at the team meeting had to say?

A No, back that far I can't really recall except that in—in light of all the participants, and I believe there was an agreement by everyone, that there needed to be some onging supervision and that no one could specifically, including the doctors, say exactly that this was something caused by either Randy or Joshua—or Marie.

Q Did anyone come out and say that this was definitely a case of abuse at the team meeting?

A Not that I recall. Not that I recall.

Q Did you have any further involvement with this case on January 25th, 1983?

A I don't believe so.

Q After January 25th of '83, did you have any contact with Joshua DeShaney, Marie DeShaney, Randy DeShaney, or any aspect of this case?

A No. I was advised by Ann that the Department of Social

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Exhibit D

(p. 74) MR. YANKALA: I understand that.

MR. MINGO: Let's go off the record.

MELODY DESHANEY,

called for examination in behalf of Defendants, being first duly sworn, on her oath testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Yankala) My name is Wayne Yankala and I represent Defendants Winnebago County, Winnebago County Department of Social Services, Cheryl Stelse and Ann Kemmeter in a federal court case which your attorneys have started in the Eastern District of the State of Wisconsin. I will be asking you several questions today. If you don't understand my question, please say so and then I will rephrase it for you.

I want to caution you, you have to answer the questions verbally so the court reporter can take your response down. If at anytime you feel like you have to take a short break for some reason, just let me know and we will take a break, all right?

A. Okay.

Q. Would you state your full name and spell your last name for the record.

A. Melody Jean DeShaney, D E capital S H A N E Y.

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(p. 75) couch and I stayed for a little while and I had to leave.

Q. Were you interested in having face-to-face contact with Chris to see, get a better understanding about her?

A. I don't think that was really in my mind at the time.

Q. So what you did, you took Joshua and dropped him off at your mother's and then just left?

A. I stayed for a little while when Dan brought the papers over, and they were going to be flying in that atfernoon or the next day, I really don't remember.

Q. Dan brought the papers over. Dan who?

A. Dan DeShaney, my uncle.

Q. And what papers did he bring over?

A. The modified divorce decree.

Q. And what did the modified divorce decree say concerning Joshua's custody?

A. The original one said that I would be allowed no visitation rights and I refused to sign it.

Q. Did the modified divorce decree change the legal custody with respect to Joshua from you to Randy DeShaney?

(p. 76) A. Yes.

Q. The first one that was drafted which would have changed legal custody to Randy had a clause or a paragraph in it which said you would not have any visitation rights?

A. Right.

Q. When did you first see that one?

A. Probably within an hour that I arrived in Cheyenne.

Q. Who brought that one over to you?

A. Uncle Dan.

Q. Do you know who drafted it?

A. I have no idea.

Q. Do you know how a second one came to be drafted?

A. Well, my mother told me that they sent it to me in Phoenix and I signed it and sent it back, but I honestly don't remember it.

Q. When you say they sent it, do you have any idea who may have sent it to you?

A. Probably Uncle Dan.

MR. SULLIVAN: Excuse me.

THE WITNESS: I don't really know.

MR. SULLIVAN: If you know the answer to a question, I want you to answer the question

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(p. 89) A. That Melody J. DeShaney agrees to pay $150 a month child support.

Q. Did you in fact sign that then?

A. Yes.

Q. Did you make any child support payments?

A. Yes.

Q. Do you recall how many you made?

A. Every month until this happened to Josh.

Q. Where were those payments made to?

A. Clerk of the District Court, Winnebago County something, I just took it down to the cleark of the district court here and they sent it on.

(Deposition Exhibit A marked for identification.)

(Brief pause.)

Mr. Yankala: Let's go back on the record.

Q. (BY MR. YANKALA) Melody, I'm handing you what we have now had marked as Deposition Exhibit A for purposes of this deposition. Is this a copy of what you referred to as the amended or modified divorce decree you referred to earlier?

A. Yes.

Q. And this is the one that would transfer legal custody back to Randy DeShaney?

(p. 90) A. Correct.

Q. And it bears your signature?

A. Correct.

Q. That is your signature there?

A. Yeah.

Q. You apparently signed it on December 5th, 1980?

A. Yep, that's the one date I got right, the first week of December.

Q. You apparently were concerned about visitation rights, that's why you requested that that be included in the amendment to the divorce decree?

A. That's why I refused to sign the original one.

Q. Immediately, I shouldn't say immediately, but a short time after you transferred custody of Joshua back to Randy, you then went on the road with these two truck drivers you became involved with?

A. One truck driver, Swede.

Q. Okay. Swede?

A. Two months later.

Q. Okay. At that point you had moved out of your residence in Phoenix?

A. Yes.

Q. And you indicated you traveled around to

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(p. 93) Q. Who did you write to?

A. Randy.

Q. What address did you write to him at?

A. Addresses that when my mother received calls from Randy or letters from Randy, the return addresses from there, there was always different addresses.

Q. You say when your mother received calls from Randy. Was Randy keeping contact with your mother during that period of time?

A. Occasionally, yes.

Q. Was he letting your mother know how things were going during that period of time?

A. Yes.

Q. Did he let your mother know where he was and where he could be contacted?

A. Sometimes.

Q. Can you tell me why he was keeping this contact with your mother and yet you had no direct contact with him during that period of time?

A. Because my mother and Randy had been friends when we were married, and he knew that if he ever needed anything, he could always call my mother.

Q. So you had obtained information from your mother about where to write to Randy?

* * *

(p. 96) Q. What would these letters say?

A. Thank you for the clothes, thank you for the visit, it was nice to see you, how is the weather, la-de-da, that was about it.

Q. Based on your last comment, I assume your mother went out to Wisconsin to visit with Chris and Randy?

A. Yes.

Q. When did that occur?

A. I have no idea. He was two and a half the first time, I believe.

Q. Your mother went out there more than one occasion?

A. Yes.

Q. Your mother didn't have any problems finding out where to go to see Joshua, did she?

A. No.

Q. Did you feel that Randy was trying to preclude you from seeing Joshua?

Mr. Sullivan: Excuse me, do you know what that means?

The Witness: That Randy was trying to stonewall me out of Joshua's life, yes.

Q. (BY MR. YANKALA) And what did you base that upon?

* * *

(p. 112) A. Bullshit.

Q. You don't believe it? Did you ever hear that before today?

A. No.

Q. Did you ever give Joshua any sort of sedative such as alcohol to calm him down when you had him?

A. Of course not.

Q. Do you know if your mother would do that?

A. Of course not.

Q. After Joshua's custody was legally transferred to Randy in December of 1980 and up until March 8th of

1984, had you ever requested that custody of Joshua be transferred back to you?

A. No.

Q. Now, you indicated that after you signed this second modification to the divorce decree concerning the child support payments, you in fact made support payments of $150 a month?

A. Yes.

Q. Did you ever send any additional money to Randy to help with respect to Joshua's care?

A. No.

Q. Did you ever send Joshua any gifts, birthday presents, things of that nature?

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(p. 125) those states?

A. I was gone probably three months.

Q. How long did you stay with Greg Bauer?

A. A couple days.

Q. Did you make any attempts or did you try to schedule some sort of a visit with Joshua at anytime while Randy had custody of him before March 8th of 1984?

A. Yes.

Q. Tell me each and every attempt you made to schedule visitation with Joshua.

A. I was never in contact with Randy.

Q. I understand. Tell me all the attempts you made to schedule visitation.

A. Well, after all the attempts, probably 20 or 30 phone calls to his mother's house, whenever my mother received a letter with a different return address on it, I would write with no reply ever.

Q. Okay. I just want to be clear on this, I want you to understand. So you say your attempts to schedule a visitation or contact with Joshua consisted of 20 to 30 phone calls to Randy's mother?

A. Yes, at least.

Q. Were the purpose of each of those 20 or 30 phone calls to set up some sort of visitation with (p. 126) Joshua?

A. To at least find out where he was and how he was doing.

Q. I understand that. But were you calling her to try to set up a visitation with Joshua?

A. Yes.

Q. Each and every time?

A. Yes.

Q. And you also indicated you wrote letters?

A. Yes.

Q. Who did you write to now?

A. I wrote one or two to Chris and then that one I told you about previously when mom received the letter from Marie in February, and also when Randy sued me for

child support I had my attorney write him a threatening letter that I would at least like a phone number where I could call Josh every Sunday; and my attorney basically told me that there was not a whole lot of how to reinforce that. Maybe if he wrote him a threatening letter threatening legal action that maybe Randy would give me something, some kind of a number or something, and there was never any reply to that either.

Q. Okay. Just so I'm correct on all these letters. With respect to your attempts to try to set

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(p. 132) phone calls or let his mother know. For awhile when I called I found out later that Joshua and Randy were living and sitting right there when I talked to his mother.

Q. When you talked to whose mother?

A. To Randy's mother.

Q. When did you talk to Randy's mother?

A. Many times. I don't remember when, it must have been after Chris and Randy were divorced and I later found out that when I had, a couple times when I had called Randy and Chris were living two or three blocks from Randy's mother; and she went down and told Chris that Melody just called, but I told her the usual that I don't know where you guys are.

Q. Twenty to thirty times you called Randy's mother and each time she said I don't know where Randy is?

A. Besides calling me filthy names and hanging up on me, yes.

Q. And that happened everytime you called for 20 or 30 times?

A. Everytime, one time I got ahold of Skip and he said if he saw Randy he would relay a message. One time I got ahold of a girl, Randy had stepbrothers and sister, stepsisters and I think it (p. 133) was a half sister and she said she had seen Randy but didn't know where he was at the time, if she saw him could she let him know that I had called.

Q. Did you ever tell your mother about your concerns? Apparently your mother had an ongoing relation with Randy as far as contacts. Did you ever tell her what your concern was?

A. My mother had went to see Josh and I knew that from her impression that he was being taken care of and he was okay.

Q. I understand that. But you have relayed to me that you had a desire to go see Joshua, and you had at least a feeling that Randy didn't want you to see Joshua. Did you ever bring that up to your mother and say talk to Randy, try to work something out?

A. Giving Josh up was a very vulnerable point with me, and my mom and I never really discussed anything like that.

Q. So it would be true that you never really discussed with your mother your concerns as far as you going to see Joshua and your impression that Randy was really against that?

A. I had mentioned it, you know, that I wasn't going to see Josh, but I knew that she had

* * *

EXHIBIT E

STATE OF WYOMING)
) SS:
COUNTY OF LARAMIE)

IN THE DISTRICT COURT
FIRST JUDICIAL DISTRICT

MELODY DeSHANEY,)
)
Plaintiff,)
)
vs.) Doc. 90 No. 153
)
RANDY A. DeSHANEY,)
)
Defendant.)

ORDER MODIFYING DIVORCE DECREE

(Filed January 23, 1981)

THE ABOVE-ENTITLED MATTER having come on before the Court this date upon stipulation of the parties to modify the decree entered herein, in the matter of child custody and visitation,

AND, good cause having been shown therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the sole care, custody, and control of the minor child of both parties, Joshua Eli, shall be relin-

quished by the Plaintiff and awarded to the Defendant; and,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff shall have the right of reasonable visitation, with reasonable notice to be provided to the Defendant and that Plaintiff shall keep Defendant informed of the child's location and phone number at such times; and,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff shall not have to make child support payments, at this time, but subject to the continuing jurisdiction to order child support at a later date, if appropriate; and

IT IS FINALLY ORDERED, ADJUDGED AND DECREED that the Plaintiff shall not remove the child from the state of the Defendant's and the child's residence while exercising visitation.

DATED this 15 day of December, 1980.

/s/ Joseph F. Maier
DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

(Caption omitted in printing)

ORDER

(Filed January 29, 1986)

On October 23, 1985, defendants Winnebago County Department of Social Services, Winnebago County, Ann Kemmeter, and Cheryl Stelse moved this Court to dismiss for failure to state a claim upon which relief can be granted, Fed. R. Civ. P. 12(b)(6), or alternatively, for judgment on the pleadings, Fed. R. Civ. P. 12(c). Both parties have presented matters outside the pleadings. The Court, therefore, intends to treat defendants' motion as one for summary judgment.

IT IS THEREFORE ORDERED that the parties shall have thirty (30) days from the date of this order to supplement their briefs by no more than fifteen (15) pages and to file any additional affidavits necessary to resolve the defendants' motion for summary judgment.

IT IS FURTHER ORDERED that the March 3, 1986, and March 10, 1986 trial dates and the February 21, 1986 pretrial conference are cancelled.

IT IS FURTHER ORDERED that trial is scheduled for Tuesday, May 27, 1986, at 9:30 a.m., and the pretrial conference is scheduled for Friday, May 9, 1986, at 9:00 a.m.

Dated at Milwaukee, Wisconsin, this 29th day of January, 1986.

BY THE COURT:

/s/ John W. Reynolds
John W. Reynolds
Chief Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

(Caption omitted in printing)

AFFIDAVIT

STATE OF WISCONSIN)
) SS
WINNEBAGO COUNTY)

CHERYL F. STELSE, being first duly sworn on oath, deposes and states as follows:

1. That she is an adult resident of the State of Wisconsin currently residing at 980 Betty Avenue, Neenah, Wisconsin 54956.

2. That affiant obtained a masters degree in social work in 1972 from the University of Wisconsin-Madison.

3. That affiant has been employed as the supervisor of the Child Protective Services Unit with the Winnebago County Department of Social Services in Oshkosh, Wisconsin since May of 1974.

4. That during the years 1983 and 1984, affiant was the immediate supervisor of Ann Kemmeter who was a case worker within the Child Protective Unit of the Winnebago County Department of Social Services.

5. That on January 22, 1983 Dr. Gehringer, a pediatrician, examined Joshua DeShaney at Theda Clark Regional Medical Center and recommended that the child be admitted to the hospital because of multiple contusions with possible child abuse.

6. That the referral of the Joshua DeShaney case to the Winnebago County Department of Social Services on

January 22, 1983 was pursuant to Section 48.891(3)(a) Wisconsin Statutes (1983).

7. That after being contacted on January 22, 1983, the Winnebago County Department of Social Services requested an intake worker at the Winnebago County Circuit Court to place temporary custody of Joshua DeShaney with the Theda Clark Regional Medical Center pursuant to Sections 48.205 and 48.207, Wisconsin Statutes (1983).

8. That the request for temporary protective custody with Theda Clark Regional Medical Center was granted by Dan Venne, Court intake worker, during the afternoon of January 22, 1983.

9. That an investigation of the January 22, 1983 referral was made by the Winnebago County Department of Social Services in conformity with Section 48.891(3)(c), Wisconsin Statutes (1983).

10. That Ann Kemmeter was the case worker within the Child Protective Unit of the Winnebago County Department of Social Services that was initially assigned to the Joshua DeShaney case.

11. That affiant's first personal involvement with the Joshua DeShaney case was on January 25, 1983 when affiant attended the child protective team meeting conducted at Theda Clark Regional Medical Center regarding the January 22, 1983 referral.

12. That the team involved in the January 25, 1983 meeting was a team created by Theda Clark Regional Medical Center.

13. That affiant attended the team meeting conducted on January 25, 1983 along with Ann Kemmeter, the case worker assigned to the case, Dr. Gehringer, a pediatrician who examined Joshua DeShaney, Dr. Derozier, a clinical psychologist who examined Joshua DeShaney, Tom Hoare, the social worker from Theda Clark Regional Medical Center, Keith Nelson, a Neenah Police Department detective, John Bodnar, Assistant Corporation Counsel for Winnebago County, along with various other hospital personnel.

14. That during the January 25, 1983 team meeting, the Joshua DeShaney case was discussed in detail and after said discussion John Bodnar, Assistant Corporation Counsel for Winnebago County, indicated that in his opinion there was not enough evidence to take the matter to Juvenile Court.

15. That on January 25, 1983 Assistant Corporation Counsel John Bodnar was the individual in Winnebago County in charge of commencing Court action in cases of suspected child abuse.

16. That as a result of the investigation and team meeting, the Winnebago County Department of Social Services filed a report with the State of Wisconsin pursuant to Section 48.981(3)(c)(3), Wisconsin Statutes (1983) stating that the report of suspected abuse was "unfounded."

17. That Joshua DeShaney was released to his father on January 25, 1983 upon the recommendation of the Theda Clark Regional Medical Center child protection team and with the concurrence of Assistant Corporation

Counsel John Bodnar who advised that the matter could not be pursued in Juvenile Court.

18. That on February 14, 1983 the Winnebago County Juvenile Intake Court closed the child protective case involving Joshua DeShaney.

19. That at all times after February 14, 1983 the involvement of the Winnebago County Department of Social Services with the DeShaney family was on a purely voluntary basis in a "family services" context.

20. That after February 14, 1983 and up to March 8, 1984 Randy DeShaney, the father of the minor, Joshua DeShaney, could have stopped any involvement or contact with the Winnebago County Department of Social Services at any point in time since said contacts were not pursuant to any Court imposed requirements or Court order.

21. That it was the practice of the Winnebago County Department of Social Services in January and February of 1983 to keep a specific voluntary family services case assigned to the worker that was originally involved in the case in the Child Protective Services Unit when the original referral was deemed to be "unfounded".

22. That after February 14, 1983 the case worker, Ann Kemmeter, was involved with providing family services on a voluntary basis to the DeShaney family up to the alleged incident of March 8, 1984.

23. That during the period that affiant was providing voluntary services to the DeShaney family prior to March 8, 1984, it was the policy of the Winnebago County Department of Social Services that a case worker should make one attempted home visit per month on any open family services case.

24. That as the immediate supervisor of case worker, Ann Kemmeter, affiant met with Ann Kemmeter every two weeks to discuss Ann Kemmeter's ongoing cases including the DeShaney case.

25. That affiant agreed with the way case worker, Ann Kemmeter, had handled the DeShaney case at all times.

26. That at no time during the Winnebago County Department of Social Services voluntary involvement with the DeShaney family did affiant feel that a referral was made to the Winnebago County Department of Social Services under Section 48.981 Wisconsin Statutes because of suspected abuse or neglect of Joshua DeShaney.

27. That at no time during the Winnebago County Department of Social Services voluntary involvement with the DeShaney family did affiant feel that any information was forwarded to the Winnebago County Department of Social Services that constituted a Section 48.981 Wisconsin Statutes referral.

28. That at no time after the January 25, 1983 team meeting and prior to March 8, 1984 did affiant ever feel that there was sufficient evidence or facts pertaining to Joshua DeShaney to take the Joshua DeShaney matter to the Assistant Corporation Counsel John Bodnar for a referral in the Court.

29. That at no time did affiant ever intentionally refuse to offer voluntary services or intentionally fail to comply with any provisions of Chapter 48 of the Wisconsin Statutes.

/s/ Cheryl F. Stelse
CHERYL STELSE

(Jurat omitted in printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

(Caption omitted in printing)

AFFIDAVIT

STATE OF WISCONSIN)
) SS
WINNEBAGO COUNTY)

JOHN BODNAR, being first duly sworn on oath, deposes and states as follows:

1. That affiant is an adult resident of the State of Wisconsin currently residing at 538 Madison, Oshkosh, Wisconsin 54901.

2. That he is an attorney licensed to practice law in the State of Wisconsin and is presently an Assistant Corporation Counsel for Winnebago County in the State of Wisconsin.

3. That affiant has been an Assistant Corporation Counsel for Winnebago County since November of 1981.

4. That in January of 1983 affiant was the attorney for Winnebago County that was primarily involved in Juvenile Court matters and specifically in filing petitions with the Winnebago County Circuit Court under Section 48.25 Wisconsin Statutes (1983) seeking jurisdiction in cases involving children alleged to be in need of protection or services under Section 48.13 Wisconsin Statutes (1983).

5. That in affiant's capacity as an Assistant Corporation Counsel, affiant attended a child protection team meeting on January 25, 1983 conducted at Theda Clark

Regional Medical Center in Neenah, Wisconsin involving a possible child abuse referral concerning the minor, Joshua DeShaney.

6. That also in attendance at the January 25, 1983 child protection team meeting were Ann Kemmeter, a case worker in the Child Protective Unit of the Winnebago County Department of Social Services, Cheryl Stelse, Ann Kemmeter's supervisor, Dr. Gehringer, a pediatrician who examined Joshua DeShaney, Dr. DeRozier, a clinical psychologist who examined Joshua DeShaney, Tom Hoare, the social worker from Theda Clark Regional Medical Center, Keith Nelson, a Neenah Police Department detective, and various other hospital personnel.

7. That the pediatrician present at the team meeting, Dr. Gehringer, was the physician that examined the child on January 22, 1983 and recommended the child be admitted to the hospital because of multiple contusions with possible child abuse.

8. That after hearing the discussions at the January 25, 1983 team meeting and after specifically questioning the pediatrician, Dr. Gehringer, affiant advised all present at the team meeting that it was his legal opinion that there was not enough evidence under Section 48.13(3) Wisconsin Statutes (1983) to bring the matter into the Winnebago County Juvenile Court.

9. That affiant has reviewed all of the information and facts assembled by the Winnebago County Department of Social Services from January 25, 1983 up to the alleged incident of March 8, 1984 and it is affiant's legal opinion that at no point was there sufficient information or facts presented to the Winnebago County Department of Social

Services to pursue the Joshua DeShaney case in Juvenile Court under Section 48.13(3) Wisconsin Statutes. That it is your affiant, as Assistant Corporation Counsel for Winnebago County, who is charged with filing a petition under Chapter 48 Wisconsin Statutes seeking jurisdiction in cases involving children alleged to be in need of protection or services under Section 48.13 Wisconsin Statutes (1983).

/s/ John Bodnar
JOHN BODNAR

(Jurat omitted in printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

(Caption omitted in printing)

AFFIDAVIT

STATE OF WISCONSIN)
) SS
WINNEBAGO COUNTY)

ANN KEMMETER, being first duly sworn on oath, deposes and states as follows:

1. That affiant is an adult resident of the State of Wisconsin currently residing at 421 Twelfth Street, Neenah, Wisconsin 54956.

2. That affiant is presently employed by the Winnebago County Department of Social Services.

3. That affiant has worked for the Winnebago County Department of Social Services as a member of the Child Protection Service Unit since September 11, 1967.

4. That affiant's first involvement with the Joshua DeShaney case was on January 22, 1983 at which time affiant was contacted by Tom Hoare, social worker at Theda Clark Regional Medical Center, located in Neenah, Wisconsin.

5. That on January 22, 1983 Dr. Gehringer, a pediatrician, examined Joshua DeShaney at Theda Clark Regional Medical Center and recommended that the child be admitted to the hospital because of multiple contusions with possible child abuse.

6. That the referral of the Joshua DeShaney case to the Winnebago County Department of Social Services

on January 22, 1983 was pursuant to Section 48.891(3)(a) Wisconsin Statutes (1983).

7. That after being contacted on January 22, 1983, the Winnebago County Department of Social Services requested an intake worker at the Winnebago County Circuit Court to place temporary custody of Joshua DeShaney with Theda Clark Regional Medical Center pursuant to Sections 48.205 and 48.207, Wisconsin Statutes (1983).

8. That the request for temporary protective custody with Theda Clark Regional Medical Center was granted by Dan Venne, Court intake worker, during the afternoon of January 22, 1983.

9. That an investigation of the January 22, 1983 referral was made by the Winnebago County Department of Social Services in conformity with Section 48.891(3)(c), Wisconsin Statutes (1983).

10. That on January 25, 1983 a child protective team meeting was conducted at the Theda Clark Regional Medical Center regarding the January 22, 1983 referral.

11. That the team involved in the January 25, 1983 meeting was a team created by Theda Clark Regional Medical Center.

12. That affiant attended the team meeting conducted on January 25, 1983 along with Dr. Gehringer, a pediatrician who examined Joshua DeShaney, Dr. DeRozier, a clinical psychologist who examined Joshua DeShaney, Tom Hoare, the hospital social worker, Cheryl Stelse, affiant's supervisor, John Bodnar, Assistant Corporation Counsel for Winnebago County, and Keith Nelson, Neenah Police Department detective, along with various other hospital personnel.

11. That during the January 25, 1983 team meeting, the Joshua DeShaney case was discussed in detail and that after said discussion John Bodnar, Assistant Corporation Counsel for Winnebago County, indicated that in his opinion there was not enough evidence to take the matter into Juvenile Court.

14. That on January 25, 1983 Assistant Corporation Counsel John Bodnar was the individual in Winnebago County in charge of Commencing Court action in cases of suspected child abuse.

15. That as a result of the investigation and team meeting, the Winnebago County Department of Social Services filed a report with the State of Wisconsin pursuant to Section 48.981(3)(c)(3), Wisconsin Statutes (1983) stating that the report of suspected abuse was "unfounded".

16. That Joshua DeShaney was released to his father on January 25, 1983 upon the recommendation of the Theda Clark child protection team and with the concurrence of Assistant Corporation Counsel John Bodnar who advised that the matter could not be pursued in Juvenile Court.

17. That on February 14, 1983 the Winnebago County Juvenile Intake Court closed the child protective case involving Joshua DeShaney.

18. That at all times after February 14, 1983 the involvement of the Winnebago County Department of

Social Services with the DeShaney family was on a purely voluntary basis in a "family services" context.

19. That after February 14, 1983 and up to March 8, 1984 Randy DeShaney, the father of the minor, Joshua DeShaney, could have stopped any involvement or contact with the Winnebago County Department of Social Services at any point in time since said contacts were not pursuant to any Court imposed requirements or Court Order.

20. That it was the practice of the Winnebago County Department of Social Services in January and February of 1983 to keep a specific voluntary family services case assigned to the worker that was originally involved in the case in the Child Protective Services Unit when the original referral was deemed to be "unfounded".

21. That after February 14, 1983 affiant was involved with providing family services on a voluntary basis to the DeShaney family for approximately 13 months prior to the alleged incident of March 8, 1984.

22. That during the period that affiant was providing voluntary services to the DeShaney family prior to March 8, 1984, it was the policy of the Winnebago County Department of Social Services that a case worker should make one attempted home visit per month on any open family services case.

23. That during the period of time that affiant was working with the DeShaney family on a voluntary family services basis, affiant made approximately 12 home visits to the DeShaney residence.

24. That during the period of time that affiant was working with the DeShaney family on a voluntary family services basis, affiant made approximately 5 attempted home visits to the DeShaney residence.

25. That during the home visits to the DeShaney family, affiant tried to maintain her relationship with the DeShaney family and worked with the family on such things as parenting and disciplinary techniques in addition to observing the children in the family when circumstances permitted.

26. That no time during affiant's voluntary involvement with the DeShaney family did affiant feel that a referral was made to the Winnebago County Department of Social Services under Section 48.981 Wisconsin Statutes because of suspected abuse or neglect of Joshua DeShaney.

27. That at no time during affiant's voluntary involvement with the DeShaney family did affiant feel that any information was forwarded to the Winnebago County Department of Social Services that constituted a Section 48.981 Wisconsin Statutes referral.

28. That at no time after the January 25, 1983 team meeting and prior to March 8, 1984 did affiant ever feel that there was sufficient evidence or facts pertaining to Joshua DeShaney to take the Joshua DeShaney matter to Assistant Corporation Counsel John Bodnar for a referral into Court.

29. That at no time did affiant ever intentionally refuse to offer voluntary services or intentionally fail

to comply with any provisions of Chapter 48 of the Wisconsin Statutes.

/s/ Ann Kemmeter

(Jurat omitted in printing)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

(Caption omitted in printing)

PLAINTIFFS' REPLY BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

(Text of brief omitted in printing.)

Dated this 19th day of March, 1986.

JOSHUA DESHANEY and MELODY DESHANEY, Plaintiffs

/s/ By: Donald J. Sullivan, Esq.
Donald J. Sullivan, Esq.
P.O. Box 1854
Cheyenne, WY 82003
(307) 634-0112

and

Curry First, Esq.
PERRY, FIRST, REIHER, LERNER & QUINDEL, S.C.
1211 N. Cass St.
Milwaukee, WI 53202

(Certificate of service omitted in printing)

ATTACHMENT "A"

1. Defendants had a direct statutory duty to protect children from abuse.

See Wisconsin Statutes Sec. 48.981 et seq.

2. Defendants were assigned specifically to child protection.

See Kemmeter deposition, Vol. I, p. 29; Kemmeter deposition, Vol. IV, pp. 48, 50. Feakes deposition, p. 30.

3. Defendants were relieved from any other duties except for child protection.

See Kemmeter deposition, Vol. I, p. 29; Kemmeter deposition, Vol. IV, pp. 48, 50. Feakes deposition, p. 30.

4. Defendants were actually and directly involved with the individual child—defendants actually knew the name, address, age, birth date, parentage, family history, IQ, and other personal details of Joshua.

See Kemmeter deposition generally; see also narrative case summary (18 pages) described therein, attached as Attachment G hereto; Petition for Determination of Status (9 pages) signed by Kemmeter and described in her deposition, attached as Attachment H hereto; Donald DeRozier, Ph.D., deposition; Feakes and Stelse depositions.

5. Defendants opened a case file on Joshua DeShaney.

See materials described at #4 above.

6. Defendants convened a Child Protection Team meeting relative to Joshua (and attended and participated).

See Kemmeter deposition, Vol. II, pp. 154-155; Stelse deposition, Vol. I, p. 104; Kemmeter affidavit, para. 12; Stelse affidovit, para. 11.

7. Defendants actually drafted a social services contract for the protection of Joshua.

See Kemmeter depositions, Vol I, pp. 70-72; and narrative case summary Attachment G.

8. Defendants affirmatively set out to protect Joshua and determine what actions would be in his best interests.

See Kemmeter deposition, Vol. II, pp. 73, 164.

9. Defendants actually received and read repeated emergency room records on Joshua and his physical/abuse status.

Kemmeter deposition, Vol. II, pp. 5, 6, 7, 14, 15, 36, 37, 38, 141, etc.

10. Defendants spoke personally and by telephone with at least two different hospital social workers soliciting information about Joshua.

Kemmeter deposition Vol. II, pp. 36-37; Vol. iv, pp. 102-103.

11. Defendants accepted Joshua as a "client" in their Child Protection Service.

See Kemmeter deposition generally and narrative case summary, Attachment G.

12. Defendants held meetings between the case worker and the supervisor to review Joshua's status and determine what action was called for.

See Kemmeter deposition, Vol. II, p. 80; Stelse deposition, Vol. I, pp. 107 through 116.

13. Defendants at least twice reviewed the social services contract to consider updating it and wrote and reviewed memoranda documenting their contacts with Joshua and their efforts to protect him.

See Stelse deposition, Vol. I, p. 115, and narrative case summary, Attachment G.

14. Defendants were placed on specific written notice that Joshua was in danger of abuse fully a year before the first Child Protection Team meeting in January 1983.

See Peter Donner deposition, pp. 6-8. See also Neenah P.D. Complaint documenting Joshua as being "a prime case for child abuse," bearing datestamp of Winnebago County DSS January 27, 1982, attached hereto as Attachment I. See also Kemmeter deposition, Vol. II, p. 45.

15. Defendants maintained a formal policy of visiting Joshua a minimum of one time a month and defendants made attempts to visit Joshua at home at least one time a month.

See Kemmeter deposition, Vol. I, pp. 57, 74; Feakes deposition p. 66.

16. Defendants in fact visited Joshua in his home and made a total of approximately 19 visits to his home for the purpose of checking on his abuse status.

See Kemmeter deposition, Vol. IV, pp. 115-116, and Kemmeter affidavit, para. 23, 24.

17. Defendant Kemmeter physically held Joshua on her lap, read stories to him, and testified that she had a personal relationship with him and that she was very fond of him and that he was very fond of her.

See Kemmeter deposition, Vol. III, pp. 44-47, 49, 50.

18. Defendants tried to have Joshua enrolled in Head Start, to provide him with an independent adult observer who could watch for fresh signs of child abuse.

See Kemmeter deposition, Vol. IV, pp. 24, 44-45; Ruth Davis deposition, pp. 17, 38.

19. Defendants had the legal power and authority to intervene in Joshua's situation and seek temporary or permanent protective custody for his protection. Defendants ALONE had this power and authority (as opposed to all law enforcement officers, e.g.).

See Wisconsin statutes Sec. 48.981 et seq.

20. There was no other entity or agency in Oshkosh or Winnebago County which had the power to intervene to bring Joshua's plight to the attention of a court or seek or obtain temporary protective custody.

See Wisconsin statutes Sec. 48.981 et seq.

21. Defendants did in fact seek and seize temporary physical custody of Joshua, in January 1983, upon the basis of physical evidence of child abuse.

See Kemmeter deposition, Vol. III, p. 17, Vol. V, pp. 51-52.

22. Joshua was a minor and in fact a three- and four-year old child, during the time at issue, and was

therefor physically, mentally, socially, and economically absolutely powerless to take any action at all for his own protection; indeed, as a toddler he was unable to realize that his situation was other than normal, was not his own fault, and was not deserved. Abundant evidence at trial will establish that abused children, in fact, typically believe that their own survival requires that they protect and love their abuser.

See Kemmeter deposition, generally; and Dr. Richard Krugman, M.D., and Stephen Bavolek, Ph.D., depositions regarding survival tactics of abused children.

23. Defendants actively managed a casefile on Joshua from January 22, 1983 through the time he was beaten into brain damage and vegetative state on March 8, 1984, a total of fifteen (15) months. During that time they had a total of twenty-three (23) caseworker contacts with Joshua and/or his family at his home, plus untold numbers of other contacts with hospital social workers, Head Start workers, and police officers on his behalf. During that time, also, they conducted approximately thirty (30) supervisory conferences at which Joshua's case was on the list of items to be reviewed.

See Kemmeter and Stelse depositions, cited above, and narrative case summary, Attachment G.

ATTACHMENT "B"

The grandmother testified as follows:

"Q. Did you ever talk with Ann Kemmeter?

A. Yes.

Q. When did you talk with Ann Kemmeter?

A. Melody and I went to her office that day.

Q. What did she say to you both at that time?

A. She said there was a file of child abuse on Joshua, and I will never forget when she got done she says, "*I just knew the phone would ring some day and Joshua would be dead.*" And she never did nothing to help him. She didn't even call us or nothing." (Myrna Bridgewater deposition, page 74, lines 13-23). (emphasis added).

ATTACHMENT "C"

Melody DeShaney testified as follows:

"What did she tell you?

A. She told me about all the times that Joshua had been taken to the hospital.

Q. Told about the various emergency room visits?

A. Yes.

Q. Did she say anything else to you?

A. *She said that she knew one day she was going to get a phone call and that Joshua was going to be dead.*

Q. Is that exactly what she said?

A. That's exactly what she said. I will never forget it." (Melody DeShaney deposition, page 141, lines 8-20). (emphasis added).

ATTACHMENT "D"

Ann Kemmeter testified as follows:

"Q. What was your reason for asking for a teammate on Joshua's case?

A. Primarily because of the number of accidents that Joshua had.

Q. What do you mean?

A. There were on several occasions when I made home visits to the home that indicated—one of May 2nd where he had a bump on his forehead, one indicated he had this abrasion, scrape on his chin in November, there were several other occasions that Joshua had bumps, lacerations on him.

Q. Did those—I take it from the fact that you singled this one case out to get teaming, I take it that you're telling us that you were not comfortable with the explanations that the adults were giving you for these various bumps and lacerations and so on?

A. I was concerned with the number of bumps and bruises, lacerations, that Joshua had, yes.

Q. Okay. Were you dubious or skeptical about the explanations you were getting from the adults?

A. At the time I requested a worker join me on this, it was more that—because of the numerous occasions that

I would be there when I would note bumps and bruises —not bruises, correction, it was bumps, lacerations, or the family had shared with me that the child had been at the emergency room. So I began to be concerned as to what really was happening in this family.

Q. Were you concerned that these were the psysical indicia of child abuse?

A. I was concerned whether it was child abuse or whether this was simply a child that was accident prone.

Q. Did you suspicion one way or the other at the time that you asked to have somebody team with you?

A. I was concerned enough that I requested that another worker join me on the case.

Q. My question is at that point, were you suspicious that this was a child abuse case?

A. Yes.

(Kemmeter deposition, Vol. I, pages 120-121).

ATTACHMENT "E"

Christine Howe Feakes testified as follows:

"Q. Did she indicate to you that she was suspicious about child abuse—

A. Yes.

Q. —Of Josh? And was that at the beginning of your involvement?

A. Yes."

(Christine Howe Feages deposition, p. 33, lines 14-19).

ATTACHMENT "F"

Christine Howe Feakes testified as follows:

"Q. Okay. Did she tell you that the file was being followed in this department as a child abuse file?

A. It was part of our unit. It was—Ann was a worker in our unit. Therefore, the cases in our unit—it was a child protective services case.

Q. By the fact it's there, you know it's one where you try to protect a little kid?

A. Correct."

(Feakes deposition, page 30, lines 12-19).

ATTACHMENT "G"

DE SHANEY, Joshua E. FS-17576 CW

CURRENT INFORMATION:

Client Name: Joshua E. DeShaney; FS 17576 SW

CONTACTS:

1/22/83, 1/24/83, 1/25/83, 1/27/82 [sic]—appointment cancelled; 2/2/83, 2/4/83, 3/8/83.

PROBLEM DESCRIPTION

Joshua DeShaney was admitted to Theda Clark Regional Medical Center on Saturday, January 22, 1983 at 1:34 p.m. by his primary caretaker and aunt, Marie DeShaney, stating that another child of approximately two years of age struck Joshua on the forehead with a metal truck. Joshua

had a bruise approximately three inches in diameter across the forehead, with a textured pattern on the surface. There was another blue bruise on her [sic] right cheek, along with an abrasion, a small abrasion on the back of his head, a bruise the size of a 50 cent piece on the left scalp, smaller bruises on his spine and arms. Several of these had dotted textured patterns to the bruises. Joshua also had bruises on his arms and legs and a bruise across both buttocks, upper thighs and ankle and heel. Dr. Gehringer, Pediatrician from the Nicolet Clinic, examined the child and recommended that the child be admitted to the hospital because of the multiple contusions with possible child abuse. Tom Hoare, social worker at Theda Clark Regional Medical Center, contacted me, as well as the Neenah Police Department, Detective Keith Nelson, to assist in the investigation. The father of the child was out ice fishing and, therefore, unable to give immediate consent for the child to be hospitalized. We requested him for a physical custody for placement at Theda Clark Regional Medical Center, which was granted by Dan Venne, Intake Worker, at approximately 4:15 p.m. in the afternoon.

Complete statements from Marie DeShaney, the primary caretaker, and of Randy DeShaney, birth father, were taken by Detective Nelson that same afternoon in my presence. A copy of their statements, as well as the report from Detective Nelson are attached in the record. Basically, even though the two did not have time to corroborate their stories, they appeared to be in agreement regarding Joshua's behavior and the types of disciplinary techniques used for the child, and expectations of the child. Both of them denied abusing the child and, further, both stated they had intentions of contacting the pediatri-

cian from Nicolet Clinic on Monday, January 5, to make an appointment for a complete physical for Joshua because of the extensive bruises on his body and the fact that they were not healing very quickly. Detective Nelson and myself found Marie DeShaney and Randy Deshaney to be very cooperative in the sharing of information.

On Monday, January 24, Tom Hoare, social worker from the hospital, and myself again interviewed Randy DeShaney, Marie DeShaney, and Randy's ex-wife, Christine. Once again all three were very cooperative and open in sharing information with us, and there appeared to be no basis to the establishment of child abuse or neglect. Rather, it appeared they were lacking in parenting skills and may not have provided adequate supervision to Joshua and two other children Marie takes care of, her son, Rusty, and a 3-year-old child by the name of Andy. Andy is the son of Claudette Goetsch. Detective Nelson also interviewed neighbors of the DeShaneys who share the same apartment building, with their responses being that while they hear crying and hear fighting, they do not hear any slapping or constant screaming, so as to indicate that a child was in danger. Both Marie and Randy also felt that Joshua's behavior has been deteriorating for the last month and one-half with more eneuresis and encopresis. He seems to play rougher and will pull his hair out of his head, especially when father is leaving. They are two bald spots on each side of the child's head, about two inches in diameter. Both Marie and Randy also indicate the child is biting himself and pinching himself. In view of the information, a request was made for a complete psychological exam to be completed by Dr. Donald Derozier.

On Tuesday, January 25, a child protection team meeting was held at the emergency room in Pediatrics, along with Dr. Derozier, Clinical Psychologist, Dr. Gehringer, Pediatrician, Tom Hoare, social worker, Cheryl Stelse, Supervisor, Child Protective Service Unit, John Bodnar, Assistant Corporation Counsel for Winnebago County, Detective Keith Nelson, of the Neenah Police Department, and myself. Dr. Gehringer reported that Joshua's past medical history is pretty normal and that his immunizations are all up to date. Dr. Derozier noted that the father was pretty attentive to Joshua, he also said that Randy has said that he feels Marie abuses the child. Randy may have had a drinking problem in the past. Randy's mother was out of the house when Randy was one. Randy's father is an alcoholic. Also noted, a bruise was also found on Joshua's penis. This bruise cannot be explained by either Randy or Marie. It was thought to look like a pinch. Detective Nelson, who had gone to the DeShaney home, indicated it did not look like the truck which Marie stated caused the bruise on Joshua's forehead could have caused the bruising. He felt the bruise on Joshua's forehead looks like something you would get from falling on a floor or running into a wall. It was the recommendation of the child protection team that the child be returned to the father, that he live independently of the primary caretaker, Marie DeShaney, the child be enrolled in a preschool program, preferably Headstart, and that the father continue to work with the department to increase his knowledge of child development as well as to increase his parenting skills. Randy entered into a social service agreement, indicating that he would be more than happy to cooperate with the department and would be accepting of any and all help that would be made available to him.

Dr. Gehringer would like to continue to follow this child for the next several months for an indefinite period of time.

It was requested that Winnebago County Juvenile Court Intake to dismiss the temporary physical custody order and any further allegations against the family at this time because of lack of ability to substantiate any abuse or neglect. Joshua was released from the hospital on the 25th and returned to the home of the father. Also attached in the record is the report from the child protection team, copies of check with medical records from that hospitalization, as well as the psychological report completed by Dr. Derozier.

Following Joshua's discharge from the hospital, I had met with Randy once in the office and made a home visit on 2/4/83. Randy was not present for the home visit, although Marie was present. Joshua did not have any further bruises on him and looked good. His eyes were still black and blue from the bump on the forehead, but these were also disipating. Randy, apparently, was helping his aunt, Sandra VanHugan, move back to Fond du Lac, Wisconsin. They would be leaving that weekend to spend approximately two weeks in Custer, Wisconsin, just South of Stevens Point, with Randy's father. Randy was to contact me upon his return. An appointment has been made for me to meet with Randy and Joshua at their Wright Avenue address on 3/8/83.

Goal—PROTECTION

Primary Objective—RESOLUTION OF ABUSE, NEGLECT, OR EXPLOITATION

Service Area—INDIVIDUAL AND FAMILY ADJUSTMENT

Role—COUNSELING

I will continue to provide counseling services to Randy to improve his knowledge of child development and parenting skills.

Service Area—EDUCATION

Role—ADVOCATE

I will advocate either a pre-school or Headstart Program, in which Joshua could participate to improve his intellectual and social skills.

Service Area—EMPLOYMENT RELATED

I will advocate full-time employment for Randy in having him explore possible job opportunities. He is presently exploring the possibility of employment in Florida, although nothing has materialized to date.

Service Area—HEALTH RELATED

I will advocate sound health care practices for Joshua and monitor to be sure that he gets in for his bi-monthly exams with Dr. Gehringer.

INITIAL SERVICE PLAN—Established 1/25/83

FINANCIAL INFORMATION:

The services this client is to receive are fee exempt.

Dictated 3/7/83 A. KEMMETER/fl Transcribed 3/17/83

Client Name: Joshua E. DeShaney; FS-17576 CW

SOCIAL SERVICE PLAN REVIEW—7/25/83

CONTACT DATES:

1/22, 1/25, 1/24—all at Theda Clark Regional Medical Center; 2/2—home visit; 2/4—home visit; 3/8—home visit; 3/25—home visit, 4/28—appointment cancelled; Randy was out of town; 5/2—home visit; 5/24, 6/10—appointment cancelled—the DeShaneys were moving to Oshkosh; 7:13—home visit.

During the past six months, little has changed within this household except the family has now moved to Oshkosh, renting a small two-bedroom home at 34 Tennessee Avenue. Randy had, at one time, felt it would be in Joshua's best interest if he and Marie no longer lived together. Randy, apparently, changed his mind as he and Marie, along with her son, Rusty, and Joshua continue to reside as a family unit. Both Randy and Marie feel that there is some improvement in their relationships since they have moved away from the Tupper family in Neenah. Both also feel that it was Andy, Joshua's playmate, who caused much of Joshua's bruising and lacerations.

I still have some concern about the number of accidents Joshua has. On 3/15/83, I received a phone call from Tom Hoare, social worker at Theda Clark Regional Medical Center. Joshua had been at the emergency room the day before with a laceration to his forehead. Joshua, allegedly, fell—leaving the mark. There was no evidence of actual child abuse. Again on May 2, at my home visit, Joshua had a bump on his forehead, at which time he allegedly fell off of his tricycle. Some of these accounts are feasible, and while they are not major injuries—there is enough of the accident-prone syndrome present for me to continue to want to follow this family for while [sic].

Randy continues to look for full-time employment, and at one point, spent several weeks away from Marie, Joshua, and Rusty in order to drive truck with his father. His father lives in Stevens Point, and apparently has a trucking business. I am aware that Randy spent some time in Florida, as well as Texas. Randy continues to search actively in the Oshkosh area for full-time employment.

In Randy's spare time he does a lot of fishing, and he has more recently taken Joshua with him on his fishing excursions. In general, Randy seems to be more attentive to Joshua, with a noted behavioral improvement. I continue to be concerned, however, that their expectations of Joshua exceed his chronological age. Example: Joshua continues to get up in the morning and make his own bed and will go to the kitchen and prepare himself a peanut butter sandwich without assistance. Randy states that they are not forcing him to do some of these higher level expectations, but that Joshua is willing and wanting to. On my last visit, we discussed possible involvement of Joshua in the Headstart Program in order that his socialization skills would increase, as well as to receive further stimulation for learning. Randy was going to contact the Headstart Program in Oshkosh for possible enrollment of Joshua.

Basically, the DeShaneys continue to remain cooperative and appear to be honest in discussing Joshua's behavior and his accidents. I will continue to monitor this family for another six months, to monitor the accidents, as well as to suggest service areas which may be in their best interest.

NEW SERVICE PLAN—7/25/83

CONTRACT

Same service plan continued.

FINANCIAL INFORMATION:

The services this client are to receive are fee exempt.

Dictated 7/26/83 A. KEMMETER/fl Transcribed 8/8/83
Social Service Plan Review Date/ 1/25/84

Client Name: Joshua DeShaney; FS-17576 CW

SOCIAL SERVICE PLAN REVIEW—1/25/84

AGENCY CONTACTS:

7/28, 8/17—not home; 8/24, 9/21, 10/12, 10/19, 11/9, 11/16, 12/2—not home; 12/7, 1/10/84—conference with Ruth Davis, of Headstart, and 1/18—home visit.

PLAN REVIEW:

I continue to have a great deal of concern over the welfare of Joshua. Both Randy and Marie continue to have high expectations of Joshua, some that he is unable to obtain and, therefore, receives at least verbal threats from Marie and Randy. In addition, there continues to be a number of accidents happening—which arouse my suspicion. On 9/21, when I arrived at the home—I learned that they had Joshua into the emergency room as he and Marie were in the kitchen when allegedly Joshua grabbed the liquid detergent for doing dishes, squeezing the bottle—resulting in soap in his eye and ultimately ending up with a scratched cornea. Again on October 19, Joshua had a bump on his left forehead; 11/9—a scraped chin that to me appeared to look like a cigarette burn, and 1/18—Joshua was in bed with the flu and I did not have an opportunity to see him. As of November, Chris Howe has joined me in monitoring

this case and Ruth Davis, from the Headstart Program, has continued to attempt contact with this family—primarily in order to make Joshua more visible to community resources in order to assist in-monitoring his numerous "accidents".

Marie and Randy have had numerous fights, most occurring during the month of November. The police reports are attached in the record. During these fights, there was not only verbal abuse to Marie, but there was also physical violence, resulting in a very badly bruised eye for Marie. Marie and Randy had separated for a time, although he is now back living with Marie and feel things are going much better.

Ruth Davis, of Headstart, has attempted to make innumerable contacts for Joshua in order that he could enter the Headstart Program. It had been very difficult for Marie to locate the family, as Randy had spent a great deal of time in the Stevens Point area visiting his father. When she was finally able to make contact, the family was initially willing to allow Joshua to participate in their school program. The family changed their mind, however, when Ruth Davis reported to the department and documented it in writing (see attached letter in the record) that on January 9, 1984, when Ruth stopped by their home—she found Joshua left alone. Ruth feels that this may have frightened the family away in view of this report. Although the family is saying no to Joshua's participation in the Headstart Program at this time, Ruth will continue to attempt contact with them to see if they reverse their decision. I strongly feel that the program would benefit Joshua by providing him with the academic stimulation, as well as social skills he is in need of. Joshua will, however, be old

enough to begin kindergarten this fall should the Head-start Program be rejected by the family.

It should be noted there is one additional new report from Mercy Medical Center of November 30, 1983, when Joshua was seen as an outpatient for a laceration on his right forehead, with blood in the left nostril, the left ear red and swollen and petekia on the left and right shoulders. Allegedly, Joshua had fallen in the bathroom—hitting his head on the toilet. Randy was confronted regarding this concern, and again denied that it was anything other than an accident.

My primary concern with this family continues to remain the innumerable accidents that Joshua has suffered, which I seriously question as simply as a child being accident prone. In addition, I am concerned about the physical fighting that occurs within the home, especially towards Marie. I am not certain who the abuser of Joshua would be; however, I cannot help but hypothize the the probability of Randy becoming upset with Marie—using physical violence, and Marie not knowing what to do with her frustrations and anger, possibly taking them out on Joshua. None of this can be proven, and at this point of time, none of them are serious enough to warrant court intervention. Chris Howe and I will continue to meet with the family even though they have become more and more resistive for purposes of monitoring Joshua in his best interests. Although the family has one again entered into a social service agreement, allowing me to meet with them, I have found that recently they have not been home for scheduled appointments, but that it is easy for me to simply stop in unannounced. We will make continued attempts to improve the parenting skills within this family

unit and to lower their expectations of Joshua's behavior and general motor development skills.

NEW SERVICE PLAN—Established 1/25/84

CONTRACT:

Same service plan continued.

FINANCIAL INFORMATION:

The services this client are to receive are fee exempt.

Dictated 1/30/84 A. KEMMETER/fl Transcribed 2/21/84

Social Service Plan Review Date: 7/25/84

INTERVENING NARRATIVE:

On Thursday, March 8, 1984, at approximately 7:00 p.m., I received a phone call from Helpline requesting I contact Judy, an RN at the Emergency Room at Mercy Medical Center. I asked whether an Oshkosh Child Protective Service worker might be available and I was informed I had been specifically requested. I phoned Mercy and spoke with Judy. Judy informed me Joshua DeShaney had been brought into the Emergency Room with a head injury. I have been providing social services to this family for a little over a year and have been continually concerned for the welfare of Joshua. I informed Judy I would be there within a half hour (I live in Neenah so had to drive to Oshkosh.))

When I arrived, I initially met with Siser Joanne Hein, chaplain at the hospital, an RN, Marie DeShaney, a half aunt of Joshua's and also Randy's present girlfriend, as well as Rusty, Marie's two year old son. I was informed Randy was in another waiting area as Joshua was undergoing a CAT scan.

I asked Marie what had happened and she informed me Joshua had fallen down the basement stairs, about four of them. I reiterated my concern to her that Joshua has simply had too many accidents and was she sure this is what had happened. She said yes.

I then spoke with Sister Hein and the RN that was with her, and they informed me that Joshua had suffered a severe head injury and that was why a CAT scan had been ordered. The child was brought into the hospital unconscious by Randy and Marie. They also informed me that Randy had displayed violent behavior when Joshua had been brought in by pounding on the doors and walls. They expressed concern as to whether he would strike out at an employee.

Randy was coming down the hall, obviously upset. I spoke with him in an attempt to calm him down. Randy was crying, shaking and speaking very loudly. He told me Joshua is his whole life and that if anything happened to Josh he would have no reason to live and mentioned the possibility of suicide. I was able to get Randy back to the small lounge area. While he was sitting there, he was shaking uncontrollably, sobbing and still very upset. I then spoke with the nursing staff to see if the Emergency Room physician could give Randy some sort of sedation. At approximately 9:30 p.m., Dr. Plueddeman ordered Randy be given 5 mg of Haldol by injection.

In the meantime, I contacted the Oshkosh Police Department requesting assistance with this case as I suspected child abuse. Det. Novotny and Officer Kronenwetter came over to the hospital. I informed them of my past

involvement with this family, including a summary of our initial involvement when Josh had been admitted to the Emergency Room at Theda Clark Regional Medical Center in January of 1983 with suspicions of child abuse.

Det. Novotny met with Randy alone and Marie in an attempt to determine what had happened to Joshua.

I briefly saw Joshua upon the completion of his CAT scan. A nurse was using a hand respirator to help the child breathe. I noted bruising on the child's cheeks, primarily the left one. I also noted a line type bruise across the base of the child's neck (throat). It was difficult to note all of the bruises at that time as the child had many tubes and tapes on his face. His eye lids were taped shut. I did not see him for a long period as I was informed they were preparing him for brain surgery.

The nursing staff informed me that Joshua had bleeding in the skull and surgery would be necessary to relieve the pressure on the brain.

Randy and Marie were sitting with Joshua when the police department arrived. Randy was stroking Joshua's hair, crying but basically composed. Randy had been sedated by this time. I asked Randy to come with me to meet with the officers from the police department. He cooperated but expressed concern as to why it was necessary as Joshua's injuries were an accident and again told me he had fallen down the stairs and again said to me "Ann, you know Joshua bruises easily."

Due to the seriousness of the case, I phoned my supervisor, Cheryl Stelse, to appraise her of the situation. After conferring with Det. Novotny regarding the case, I phoned

Ms. Stelse back asking if she could bring Joshua's Social Service record down to the hospital for Det. Novotny to review. We were advised that Joshua had a 25% chance of pulling through the surgery that evening.

We were also informed that Joshua did have blood in his urine and that an x-ray had been taken of the abdomen to determine if there was any extensive internal bleeding. The main concern of the medical personnel that night was to attempt to correct life threatening conditions for the child. It is unknown if there were/are any other injuries, i.e. broken bones.

Det. Novotny phoned District Attorney Dee Dyer in reference to the case as the child's life was in jeopardy. I also spoke with Dee Dyer with some basic background information being shared. Ms. Stelse arrived during the time we were talking with the District Attorney.

Det. Novotny and I did not contact a Juvenile Court Intake Worker until the surgery had been completed not knowing whether Joshua would survive.

Prior to the completion of the surgery, Randy and Marie requested to leave the hospital to get some fresh air and to get some cigarettes. They also wanted to check to see if a neighbor/friend, Tammy Winkler, was home yet so that she could take care of Marie's son, Rusty.

Randy, Marie and Rusty left the hospital. Tammy Winkler was not home so Rusty returned to the hospital with them. Randy and Rusty returned to the small lounge area and fell asleep while Marie went to another area and watched television. Randy had also wanted to go home prior to the completion of the operation but I convinced him to stay as they have no telephone, and surely they

would want to know the result of the surgery and speak with the doctor. Randy agreed.

It should also be noted during the entire time I was at the hospital that night that Marie remained controlled. While she was shaking from time to time and appeared tense, at no time did I see her cry or express sadness/remorse over the situation.

After the surgery, Dr. Letellier, a neurosurgeon, informed all of us including Randy and Marie, that it was necessary for him to remove a large part of the child's skull to relieve the pressure. He informed the family that the child was in Intensive Care and would remain there indefinitely. He also told the family it could be weeks before Josh would wake up if he did at all. Randy, Marie and Rusty left the hospital at that time to return home.

Dr. Letellier, his nurse, medical staff from Emergency Room met with Det. Novotny, myself, Cheryl Stelse and Officer Kronewetter. He informed us that there were several points of internal bleeding in Joshua's skull. He was able to stop the bleeding and remove the already present blood. He also noted that Joshua did not have a skull fracture which therefore did not make the injury consistent with what the family indicated had happened. He noted there were several spots of old bruising of Joshua's head noted only after the head had been shaved for the surgery. He stated the only way he could have suffered the type of bleeding he had would have been by a violent shaking or continuous hard hitting of the head as by an open hand. He noted there was no other point of impact on the head nor was there any external bleeding on the head. Dr. Letellier removed a large part of the skull to

relieve the pressure. The next major concern would be the amount of swelling the brain would incur due to the trauma. His prognosis for Joshua was very guarded. He felt Joshua would make it through the night.

At approximately 12:40 a.m., Gladys Farr, Juvenile Court Intake Worker, was contacted to authorize Temporary Physical Custody. This was granted.

On Friday, March 9, I met with John Juknialis, Juvenile Court Intake Worker, to advise him of the situation. I informed him that Det. Novotny would be meeting with Randy and Marie again as part of the ongoing investigation. I advised John that the father had left the hospital prior to the Department taking temporary physical custody of the child and therefore the Waiver had not been signed. John Bodnar, Assistant Corporation Counsel, was also advised of the situation. John Juknialis met with Randy and myself after being interviewed by Det. Novotny. Randy signed the waiver. It was made clear to Randy that he could not remove the child from the hospital until further order of the Court.

In meeting with John Juknialis and John Bodnar, it was determined it would be in everyone's best interests that if Randy were to see Joshua, he should be allowed to go to the hospital and view the child from the child's window in intensive care.

At approximately one o'clock that afternoon I went to Mercy Medical Center and met with Ann Marshall, hospital social worker. I brought along signed temporary physical custody orders as well as the signed waiver to be put on Joshua's chart. We met with the nurse that was caring for Joshua and the supervisor of the unit. I explained to them that there may be two courts involved with this case, both Juvenile and Criminal. I explained that Joshua could not be removed from the hospital without further order of the Court. I also asked them if they felt comfortable with our suggested visitation request. They felt it would be appropriate.

At that time, I also learned that the pressure in Joshua's brain seemed to be under control. They told me there was some involuntary movement which may be a good sign. His blood levels were okay. I also requested to see the other bruising to Joshua's body. There was extensive bruising to both his right and left lateral thighs. Bruising in the groin area. Two bruises to his left upper arm. The child's head was completely bandaged making it impossible to check any facial or head markings. The child is on life support systems (a machine is breathing for him.) Joshua was also receiving intravenous feeding, had drain tubes, etc., from the right side of his head where the surgery had been performed. He has a nurse with him constantly.

From the hospital I went to the home of Randy. Randy had been on the sofa trying to sleep when I arrived. Rusty was in his bedroom taking a nap and Marie was over to the home of Tammy Winkler across the street. I informed Randy that I had just come from the hospital and updated him on Josh's condition. I also advised him as to how visitation would be handled. I explained that due to the intensive care Joshua was in need of plus the amount of machinery that was necessary for the care of Joshua it would be best if he not enter the room so the nurse would have no interference. Randy agreed.

I asked Randy again what had happened the previous night explaining that I was not law enforcement. Randy told me that he and Marie were repairing a clock and realized they needed a screw driver. Randy also told me the coffee table had some nails that were coming out of their coffee table and a hammer was also needed. Joshua volunteered to go down to the basement to get the hammer and screw driver. Randy stated he walked out to the kitchen with Marie following him to open the door from the kitchen to the back hall. The door does not have a door knob and the night lock chain on the upper part of the door is used to pull it open. (Marie came home at this point. Randy went back to the sofa and Marie continued with the story.) Marie told me the door was open and Joshua went down the steps. He was wearing his pajamas with feet and that the feet were too big for Joshua. She said she and Randy were in the kitchen when they heard a bump, bump, bump. They called to him and when there was no answer Randy ran downstairs.

There are six relatively steep steps going down to the basement. They are partially covered by a green linoleum, part of which has been chipped off. At my request, Randy joined us at that point and told me that Joshua was found curled in a ball laying a bit to the right with his head facing the front of the house. The workbench where the tools are would necessitate a right turn from the steps. Randy said Joshua was limp and did not think he was breathing, so he took him upstairs and he and Marie tried mouth to mouth as well as CPR. Randy told me he slapped Joshua's cheeks and yelled at him to wake up. When they got no response they took him to Mercy. At no time did either one of them mention that they heard any screams from Joshua, just the bump, bump, bump.

Perhaps it should also be noted that the evening of March 8, I did not observe any bruising or markings on Rusty, Marie's son, nor have I ever been concerned that that child was being abused during the year plus that I have been involved with the family. I have had continued concerns of abuse to Joshua and in November, Chris Howe of the Child Protective Service Unit joined me to team this case. I also attempted to have Joshua enroll in the Headstart Program in order that he may have more visibility in the community. Ruth Davis of Headstart had contact with the family and the family refused to have Joshua attend.

The following is a list of dates which note some type of injury to Joshua.

January 22, 1983—Theda Clark Regional Medical Center. Laceration to the head and multiple bruising. Suspected child abuse. Teamed by the Child Protective Service Team at the hospital. Documents in our record. Note: Randy was fishing in New London when this incident occurred and did not arrive at the hospital until much later.

March 14, 1983—Theda Clark Regional Medical Center. Josh seen in emergency with laceration to forehead.

May 2, 1983—On my home visit, I noted a bump on Joshua's forehead.

September 14, 1983—Oshkosh Police Department phoned reporting that a small child (Joshua) was being slapped by a woman (Marie) repeatedly with the child falling to the ground.

September 21, 1983—Mercy Medical Center. Joshua seen in Emergency Room for a laceration on the forehead.

October 19, 1983—On my home visit, I observed a lump on Joshua's left forehead.

November 9, 1983—On my home visit, I noted markings on Joshua's chin. I wondered if they might have been cigarette burns.

November 11, 1983—Oshkosh Police Department was contacted twice with domestic problems and violence between Marie and Randy.

November 12, 1983—Oshkosh Police Department was contacted as Randy had allegedly beaten Marie.

November 30, 1983—Mercy Medical Center. Joshua was taken to the emergency room with a laceration on the right forehead/bruises on both shoulders and blood in the left nostril. The left ear was red and swollen.

January 9, 1984—Ruth Davis from Headstart had made a home visit to enroll Joshua in Headstart. She found Joshua home alone.

January 18, 1984—On my home visit, I did not see Joshua as he was allegedly in bed with the flu.

February, 1984—I attempted contact but found no one home.

March 3, 1984—Marie was apparently seen at Mercy Medical Center with a split lip, requiring sutures. She and Randy were allegedly having a fight.

March 7, 1984—Unannounced home visit by me. It was Rusty's second birthday and Marie and Randy were in the kitchen decorating his birthday cake. I wrote Happy Birthday Rusty on the cake and Randy finished decorating. Both Marie and Randy seemed to be at ease and told

me there were fewer fights and they were getting along much better. Marie had had nose surgery for some type of blockage and reported that her nose was tender. At no time did she mention that Randy had apparently hit her splitting her lip requiring medical attention.

Rusty and Joshua were taking a nap. Joshua had woken up. Marie went back to his bedroom quieting him down and then came back to the kitchen where we all were. I don't know why but I did not ask to see Joshua. All appeared to be okay and a relaxed atmosphere in the household.

They did mention that Joshua had fainted several days earlier in the bathroom for no apparent reason.

They also told me that Randy might have a job with a security company and that he was being called back for a third interview. Just prior to my leaving Randy started to clean approximately 25 perch he had caught. They were having friends over for dinner that night to celebrate Rusty's birthday. Randy was filleting the fish in order that the children could eat them without the fear of the children having bones caught in their throat. I was at the home for about forty-five minutes.

On Saturday, 3/10/84, I spoke with hospital personnel on two occasions, Joshua continues in critical condition. They are having increased difficulty in controlling the pressure in his brain. Prognosis is not good.

On Sunday, 3/11/84, I stopped by Mercy Medical Center. I spoke with the staff and also saw Joshua and his family. The nurse reported Joshua is continuing to have increased difficulty with pressure on the brain. I arrived at ap-

proximately 2:45 p.m. A brain pressure of zero is normal . . . 30 is a danger zone. While I was there the machine registered a fluctuating reading of 28—29 and 30. The nurse reported it was too soon to give Joshua any further medication. The prognosis remains extremely poor. Randy, Marie and her son Rusty were in the ICU visiting area. I went in to speak with them. While I was there there was a phone call for Randy. He reported it was a call from his former wife, Melody, in Wyoming . All I could hear from the conversation was that Joshua was in the hospital and that Joshua had fallen down some stairs. Randy gave me her phone number (307) 637-4342. To my knowledge, he still has not been able to contact his father who is a truck driver, but was also to contact Kim, perhaps a half/step brother.

Dictated 3/11/84 A. KEMMETER & Transcribed 3/15/84/la

Client Name: Joshua E. De Shaney; FS-17576 CW

INTERVENING NARRATIVE

CONTACT DATES:

3/12—Mercy Medical Center; Theda Clark Regional Medical Center; conference with Detective Novotny; District Attorney's Office; John Juknialis, and Attorney John Bodnar; 3/13—Mercy Medical Center; 3/4—meetings with Melody DeShaney, her mother, Myrna Bridgewater, Tom and Kim DeShaney, Randy and Marie; Ann Marshall; Detective Novotny; John Juknialis, Intensive Care Unit staff; 3/15—team meeting—Mercy Medical Center; 3/16—phone contact—Kim and Tom DeShaney; phone contact—Mercy Medical Center, regarding Joshua's condition; 3/19

—phone contact—Mercy Medical Center; phone contact—Ada Weimer; Betty Tellock, and Detective Novotny; 3/20—phone contact—Ann Marshall; John Juknialis, and Attorney Bodnar; 3/21—Novotny, Bodnar, Marshall, Juvenile Court Intake; 3/23—phone contact—John Juknialis; 3/27—Mercy Medical Center—team meeting; 3/28—Randy and Marie, Intensive Care Nursing staff and Joshua; 3/30—phone contact—Melody DeShaney; 4/4—Mercy Medical Center; Randy and Josh; 4/5—phone contact—Dee Dyer; Ann Marshall; 4/6—phone contact—Ann Marshall; Dee Deyer; John Juknialis; 4/10—phone contact—Ada Weimer; 4/11—Ann Marshall; John Juknialis; 4/12—phone contact—John Bodnar; Juknialis; 4/16—Joanne Juettner, Mental Health Clinic; 4/18—Randy; Ann Marshall; 4/19—Ann Marshall; John Juknialis; Detective Novotny; Ada Weimer; 4/14—Ada Weimer's home in Milwaukee; 4/25—meeting with Bodnar, Dan Venne, Detective Novotny; 4/26—Rusty was taken into temporary physical custody and placed in foster care after a meeting with Dan Venne, Detective Novotny, Marie, and Randy; 4/27—waiver hearing in front of Leo Mack, Court Commissioner; 4:30—conference with guardian ad litem, Pat Seubert; 5/1—conference with guardian ad litem, Seubert, Pam Thorp; 5/2—Institutional Review meeting at Mercy Medical Center; 5/3—conference with Dee Dyer and Gene Bartman; 5/7—initial hearing for Joshua; 5/16—Melody DeShaney; Marie; Rusty; Randy; Mrs. Weimer; Debbie Tellock; 5/17—John Doe hearing; 5/18—phone contact—Ann Marshall; 5/30—conference with Gene Bartman; 5/6—Joshua was transferred to Central Wisconsin Center, Madison; 6/11—conference with Attorney Seubert; 6/15—status conference with Judge Williams; John Bodnar, and Attorney Tom Fink; 6/27—Central Wisconsin Center, Madison; Joshua and staff.

Joshua remained in critically stable condition and in the Intensive Care Unit at Mercy Medical Center from his admission until March 30, at which time he was transferred to the Pediatric Unit. He remained on the Pediatric Unit until June 5, 1984, at which time he was transferred to Central Wisconsin Center for the Developmentally Disabled in Madison. At the March 27th team meeting at Mercy Medical Center, both Dr. Letellier, the brain surgeon, and Dr. Kayali, Pediatrician, felt that Joshua would live, but indicated severe brain damage. It was also noted that if Joshua were to expire it would be the result of either massive infection or upper respiratory failure. Copies of Joshua's medical records are attached in the record for specific details during his recuperation at the hospital. In early May, the Institutional Review Committee met, including Mary Ann Grundy from the 51.42 Board, and it was determined at that time that Central Center was probably an appropriate placement for Joshua.

The staff from Central Center came to Mercy Medical Center for evaluation purposes and also deemed him an appropriate placement at their institution. Prior to his leaving Mercy Medical Center, however, Dr. Letellier felt it was in Joshua's best interest to put a plate in the head where the skull bone had been removed at the time of inital surgery. It appeared to the staff at Mercy Medical Center and has been confirmed by the staff at Wisconsin Central Center that once the plate had been replaced, Joshua has made tremendous strides in cognitive abilities. The staff at Central Center feel that Joshua will regain m mory, will regain speech, and will need intensive amounts of physical therapy to regain use of his limbs. Joshua has virtually no control over any of his limbs nor

does he have head control. It was determined from one of the EEG's performed at Mercy Medical Center that Joshua was brain dead on the right side. The staff at Central Center, however, feel that the brain is growing —which will be to his advantage providing he receives the correct stimulation and therapy for Joshua's intellectual development.

It is presently the strong and urgent recommendation of the staff at Central Wisconsin Center, with whom we met on 6/27/84, that Joshua be transferred immediately to a rehabilitati:a center, with their recommendation that he be placed at Gilette Rehab Center in St. Paul, Minnesota. Joshua is no longer appropriate for placement at Central Center in view of his intellectual development. They feel very strongly that Joshua needs to be placed in a setting where there are normal children for ongoing stimulation. The Rehab Unit in St. Paul has a child unit, which to their knowledge is the only rehab center with such facilities. There is also concern by the staff that if he is not placed shortly, he may regress—resulting in more damage. Also, if he is not provided with appropriate stimulation, apparently, the "brain cells could make wrong connections" which would be more harmful to Joshua in the long run if he does not receive the appropriate and correct stimulation. I will be checking with Gillette Rehabilitation Center within the next day or two to determine possible placement.

RANDY:

Criminal charges are presently pending against Randy. He has been charged with two counts of child abuse and

one count of conduct regardless of life through the District Attorney's Office. Randy was arrested on May 30, 1984 and has been detained in the Winnebago County Jail since then. Randy appeared before Judge Carver for a bail hearing, and to my understanding, became very upset and violent in the court room, and therefore, the bond was set at $3,000. Randy is unable to come up with the money and, therefore, remains in jail. He was arrested after an extensive investigation and John Doe hearing held before the Honorable Robert Haase. He is presently being represented by Attorney Thomas Fink, of Menasha, and will enter a plea to the charges on June 29, 1984.

During the course of Joshua's hospitalization at Mercy Medical Center, Randy spent the majority of his time, both day and night, at the hospital with Joshua. He did not interfere with Joshua's care—he was a very attentive father and very cooperative. Randy did become very upset and angry of what he felt were accusations of child abuse against him, and at the point an article appeared in the paper—Randy became very agitated—seeking out officials to stop any further information being released. It is uncertain as to how the press became aware of the situation in Joshua's condition.

MARIE AND RUSTY:

On April 26, 1984, Rusty DeShaney, son of Marie, was taken into temporary physical custody and placed in foster care. The decision was made to take Rusty into temporary physical custody after reviewing the results of the extensive investigation by the Police Department and our Department. What we were not aware of at the time was the amount of violence that had occurred within the household,

specifically between Randy and Marie themselves. Taking into consideration Joshua's critical injuries, as well as the violence between the two adults in the home, Dan Venne, Juvenile Court Intake Worker, Detective Novotny, and I felt that there was no option but to protect Rusty by placement in foster care. Marie and Randy refused to sign the waiver, and, therefore, a hearing was held on the following day in front of the Honorable Leo Mack.

Rusty had been residing with the Weimer family in Milwaukee since March 11, 1984. Rusty was removed from the Weimers and placed in a foster home in Winnebago County. Rusty's Juvenile Court process has been completed; the Honorable Robert Hawley making a finding that Rusty was a child in need of protection and services under Wisconsin Statutes 48.13 (3), physical abuse, and 48.13 (11) emotional damage. Virginia Sherer, of the Foster Care Unit, is presently involved with Rusty and Marie.

PRESENT STATUS:

As indicated previously, Randy has been charged with two counts of child abuse, and one count of conduct regardless of life. I will make the assumption that this will go into a jury trial within the next 30 to 60 days In the meantime, all Juvenile Court proceedings will remain on hold until the completion of Criminal Court action in order that one does not interfere with the other or jeopardize each other's case in any way. Assistant Corporation Counsel, John Bodnar, and guardian ad litem, Patrick Seubert, are in agreement with Judge Williams for the decision to hold off with the Juvenile matter. At the present time, Winne-

bago County Department of Social Services holds legal custody of Joshua, and at present there is a Court Order for him to be placed at Central Wisconsin Center in Madison. Plans are in the process of being formulated for Joshua to enter a rehabilitation center, possibly the Gillette facility in St. Paul, Minnesota. There is no urgency to hear this matter in Juvenile Court in view of the fact that Joshua is receiving the special care and attention he is in need of.

It should also be noted that Melody DeShaney, Joshua's birth mother, is very interested in obtaining legal custody for placement with her upon completion of Joshua's rehabilitation. She has contacted Attorney George Curtis to represent her in these proceedings. Attorney Seubert will be contacting the Department of Social Services in Cheyenne, Wyoming, requesting a home study of Melody to determine the feasibility of having Joshua placed with her.

For further information and details regarding this family and Joshua, please refer to the attachments in the records for police reports, medical reports, Court information, etc.

End of intervening narative.

Dictated 6/28/84 A. KEMMETER/fl Transcribed 7/13/84

ATTACHMENT "H"

PETITION FOR DETERMINATION OF STATUS—IN NEED OF PROTECTION OR SERVICES

1. Children's Division; 2. County: WINNEBAGO; 3. Intake Case No. J1 202; 4. In the interest of: JOSHUA E. DeSHANEY, a person under the age of 18; 5. Child's Street Address: 34 W. Tennessee Ave., City: Oshkosh, State: WI, Zip: 54501; 6. Birthday: 3-21-79 (5); 7. Father's name and Address: Randy DeShaney, 34 W. Tennessee Ave., Oshkosh, WI 54901; 8. Mother's Name and Address: Melody DeShaney, Cheyenne, Wyoming, (Phone # 307-637-4242); 9. Guardian, Legal Custodian, Spouse or Nearest Relative's Name and Address: Randy DeShaney; 10. Child in Temporary Physical Custody: [ ] No [ ] Yes; 11. Where Held (Staying): Mercy Medical Center, 631 Hazel St., Oshkosh, WI 54901; NOTE: If facts 4. thru 14. are unknown or cannot be ascertained, so state; 12. Date of Custody: 3-9-84; 13. Time of Custody: 12:40 A.M.; 14. Disclosure of Location is Dangerous to Child or Custodian: [X] No [ ] Yes;

15. TO THE CIRCUIT COURT, CHILDREN'S DIVISION:

Ann L. Kemmeter your Petitioner, hereby, states on information and belief, towit: That the Child named above is In Need of Protection or Services, in that, he has been the victim of physical abuse including injury which is inflicted by another by other than accidental means, pursuant to sec. 48.13(3), Stats., and that the child's parent, guardian

or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, and medical care so as to seriously endanger the physical health of the child, pursuant to sec. 48.13(10), Stats., to wit:

1. On March 8, 1984, Joshua DeShaney was brought to the Emergency Room of Mercy Medical Center, Oshkosh, by his father, Randy DeShaney, and Randy DeShaney's girlfriend, Marie DeShaney. (Marie DeShaney is divorced from Randy DeShaney's half-brother.) Joshua DeShaney was comatose at the time that he entered the Emergency Room at Mercy Medical Center. In addition, Joshua was having difficulty breathing and resuscitation was necessitated with a hand respirator. The Emergency Room staff was informed by Mr. DeShaney and Ms. DeShaney that Joshua had fallen down the basement steps in the DeShaney home and had suffered a severe head injury. A CAT scan was immediately run by the hospital staff on Joshua DeShaney. A determination was made, pursuant to the result of the CAT scan, that Joshua was suffering from cerebral bleeding, thus necessitating neurosurgery to relieve the pressure placed on the brain by such bleeding.

16. Wherefore, Petitioner prays that the Court fix a time, date and place for hearing on the Petition according to law and find that the named Child in Need of Protection or Services, and that the Court enter an order determining the status of the named Child to provide for future care, custody, status, and/or such other

disposition and provision as the Court shall deem necessary and proper in the best interests of the named Child and the public in accordance with Chapter 48, Wisconsin Statutes.

Signed: /s/ Ann L. Kemmeter, Petitoner

17. Prosecutor's Name and Title: John A. Bodnar, Asst. Corp. Counsel; 18. Signed and Approved for Filing: John A. Bodnar; 19. Date: 4/25/84.

2. That an examination of Joshua DeShaney's body completed by Dr. B.F. Kayali, a pediatrician, shortly after Joshua's admission to Mercy Medical Center noted extensive bruising to Joshua's right and left lateral thighs. Dr. Kayali also noted bruising of the child's groin area. Two bruises were also noted on Joshua DeShaney's left upper arm. Dr. Kayali has informed petitioner's attorney that upon questioning Randy DeShaney as to the cause of the bruises on Joshua's thighs, Randy DeShaney informed Dr. Kayali that these bruises were a result of spanking or corporal discipline inflicted upon Joshua by Randy DeShaney.

3. Dr. Marc Letellier performed neurosurgery upon Joshua DeShaney on March 8, 1984. Dr. Letellier removed a large part of Joshua's skull to relieve the pressure on Joshua's brain. Dr. Letellier informed the petitioner that there were several points of internal bleeding inside Joshua's skull. The neurosurgery performed on Joshua allowed Dr. Letellier to stop the bleeding within Joshua's skull and remove

the already present blood. Dr. Letellier further noted to the petitioner that Joshua had not suffered a skull fracture and that there was no apparent new bruising on Joshua's head. Dr. Letellier informed the petitioner that it was his professional opinion that Joshua's injuries were inconsistent with Mr. DeShaney's explanation as to how such inuries occurred. Dr. Letellier based this opinion upon the observation that no point of impact was noted on the head nor was any external bleeding to the head present. It was Dr. Letellier's professional opinion that Joshua's brain injuries could only have been suffered as a result of violent shaking or continuous hard hitting of the head, as by an open hand. Such shaking, according to Dr. Letellier, resulted in the tearing of blood vessels within the skull, thus leading to the cerebral hemorrhaging which was discovered upon neurosurgery. Dr. Letellier further informed the petitioner that several spots of old bruising to Joshua's head were noted after his head had been shaved for surgery.

4. Dr. Kenneth Viste, a neurologist, has diagnosed Joshua DeShaney as presently suffering from profound traumatic encephalopathy with probable associated seizure disorder. Joshua is completely paralyzed on the left side of his body and Dr. Viste has diagnosed

Signed: Ann L. Kemmeter, Petitioner

Signed: John A. Bodnar, 4/25/84
Petitioner

John A. Bodnar, Assist. Corp. Counsel

Joshua as having virtually no electrical activity in the right hemisphere of his brain. Joshua DeShaney

is presently semi-comatose. He does not respond to verbal stimulation at this time. Some response to tactile stipulation of Joshua has been noted by the medical personnel treating him.

5. Joshua DeShaney's medical records indicate a history, within the last fourteen months of extremely frequent bruising and injury. The petitioner is presently of the belief that such past bruising may be attributable to child abuse. Such bruising includes an admission of Joshua DeShaney to Theda Clark Regional Medical Center, Neenah, on January 22, 1983, for lacerations to the head and multiple bruising on Joshua's body. On March 14, 1983, Joshua DeShaney was again admitted to the Emergency Room of Theda Clark Regional Medical Center with a laceration to his forehead. On September 21, 1983, Joshua DeShaney was seen at the Emergency Room at Mercy Medical Center with a laceration to his forehead. On September 21, 1983, Joshua DeShaney was seen at the Emergency Room at Mercy Medical Center with a laceration to his forehead. In addition, your petitioner, on May 2, 1983, noted a bump on Joshua's forehead during a home visit. On October 19, 1983, the petitioner observed a goose bump on Joshua's left forehead during another home visit. On November 9, 1983, the petitioner noted markings on Joshua's chin during a home visit which resembled cigarette burns. On November 30, 1983, Joshua DeShaney was brought to the Emergency Room of Mercy Medical Center suffering from a laceration on the right forehead, bruises on both shoulders, and blood in the left nostril of his nose. His left ear was also red and swollen at the time.

6. Your petitioner is aware of a history of previous domestic violence in the DeShaney home. On November 11, 1983, the Oshkosh Police Department was contacted twice with regard to domestic problems and violence between Marie DeShaney and Randy DeShaney. On November 12, 1983, the Oshkosh Police Department was again requested to investigate an alleged beating of Marie DeShaney by Randy DeShaney. On March 3, 1984, Marie DeShaney was provided treatment at Mercy Medical Center for a split lip, which required sutures. This injury was apparently the result of a fight between Randy DeShaney and Marie DeShaney.

7. On April 16, 1984, Tammy Winkler, 29 W. Tennessee Ave., Oshkosh, WI, informed the Oshkosh Police Department that in February of 1984, Joshua DeShaney had informed her that he was having problems urinating and that his penis hurt. Joshua DeShaney informed Ms. Winkler, at that time, that his penis hurt in that Marie DeShaney had kicked him in the penis prior to that time.

Signed: Ann L. Kemmeter, Petitioner

Signed: John A. Bodnar, 4/25-84
Petitioner

John A. Bodnar, Assist. Corp. Counsel

8. On April 16, 1984, Kelly J. Dudebobre, Augusta, WI, informed the Oshkosh Police Department by affidavit that on December 8 or 9, 1983, Marie DeShaney had stated that she could not stand Joshua DeShaney and hated him and that she was afraid that she would hurt

him or maybe even kill him in the future. Later, that same night, Kelly Dudevobre observed Joshua DeShaney in the company of his father. Joshua had stitches in his head at that time. When Kelly Dudebobre inquired of Randy DeShaney as to how such stitches had come to be necessitated, Randy DeShaney replied Joshua DeShaney had defecated in his pants; Marie DeShaney had told him to clean up his pants and when Joshua DeShaney refused to, Marie DeShaney struck Joshua DeShaney causing his head to hit the bathroom sink, thus causing a cut for which stitches were necessitated.

9. Ada E. Weimer, 3079 N. 37th St., Milwaukee, WI, has stated to the Oshkosh Police Department, that in the summer of 1983 she observed Randy DeShaney bodily throwing Joshua DeShaney through the air.

10. Debra L. Tellock, 356 Oak St., Menasha, WI, has informed the Oshkosh Police Department that during the summer of 1982, she observed Randy DeShaney throw Joshua through the air on several occasions and also kick Joshua DeShaney in the back.

11. It is the petitioner's belief, upon information provided to her by Drs. Letellier, Kayali, and Viste, and upon information provided to the Oshkosh Police Department by the aforementioned persons, that Joshua DeShaney has been abused over a long period of time by both Randy DeShaney and Marie DeShaney. Moreover, petitioner has not been provided any information which would show that Joshua DeShaney was under the care or control of any person other than Marie DeShaney and Randy DeShaney immediately

prior to the injury which led to his hospitalization on March 8, 1984.

Signed: Anne L. Kemmeter, Petitioner

Signed: John A. Bodnar, 4/25/84 Petitioner

John A. Bodnar, Asst. Corporation Counsel

Office

TEMPORARY PHYSICAL CUSTODY REQUEST

(Requesting Agency Complete items 3-18)

2. County—

Child's Last Name—DeShaney First Name—Joshua. Middle—E. 4. Birthdate—3-21-79. 5. Sex—☐ Male ☐ Female. 6. Date taken in custody—1/22/83 Time 4:15 P.M. Address—110 Wright City—Neenah State—Wisconsin Zip—54956 County—Winnebago 8. Telephone —None—Father's Name & Address—DeShaney, Randy A. 110 Wright Neenah, Wisconsin Telephone—Home none Mother's Name & Address—DeShaney, Melody E.—whereabouts unknown Guardian/Legal Custodian's Name & Address—DeShaney, Randy A. 110 Wright Neenah, Wisconsin Requesting Agency Name—Neenah Police Dept. 13. Request Date:—1-22-83 Time:—4:15 PM 14 Agency Case No.— Agency Address—Doty Street, Neenah 16. Agency Representative—Keith Nelson Telephone—(414) 729-4677 Reasons for Taking Child Into Physical Custody—(Check All That Apply)—☐ Warrant Capias Judicial Order Dated:———. ☐ Issued by Judge ——— County——— Court———

☐Reasonable Belief

☐ Capias or Warrant or Fugitive ☐Run Away From Home [X] Suffering from Illness or Injury or in Immediate Danger ☐ Violated Court-Ordered Supervision ☐ Capias or Warrant From Other State (Specify)———

☐ Committing or Has Committed Crime (Specify)———

☐Violated a Civil Law or Local Ordinance Punishable by Forfeiture (Specify)———

☐ Violated "Continuation of Custody" Order Dated——— Reason Child Not Immediately Released—Physician ordered the child admitted to the hospital for investigation of possible child abuse. Intake Worker Authorization (Intake Worker Complete Items 1 & 2 and 19-27. Distribute copies.) Criteria for Holding a Child in Physical Custody (s. 48.205) —(Check All That Apply) A. If the named child is not held he/she will—(1) ☐ commit injury to the person or property of others (2) ☐ cause injury to self (3) [X] be subject to injury by others. B. ☐ The parent, guardian or legal custodian of the named child is—☐ unavailable ☐ unwilling ☐ unable to provide adequate supervision and care. C. ☐ The child will run away or be taken away so as to be unavailable for proceedings of the Court, Children's Division. ☐ Criteria of s. 48.205 Not Met. Named Child Released To: ☐ Self ☐ Parent/Guardian. Parents Notified? ☐ Yes [X] No Date— Time— A.M./P.M. Worker— 22. Child's Rights Given? ☐ Yes [X] No Worker— Being Duly Authorized by the Circuit Court, Children's Division, I Hereby Order The Following: A. ☐ Immediate Release To: ☐ Self ☐ Parents ☐ Guardian ☐ Legal Custodian ☐Home of Relative ☐ Responsible Adult B. ☐Placement in NON-secure custody at (Specify): Theda Clark Hospital ☐ Home Detention Requested ☐ Rules Issued. • • •

Office

TEMPORARY PHYSICAL CUSTODY REQUEST

(Requesting Agency Complete items 3-18)

2. County—

Child's Last Name—DeShaney First Name—Joshua. Middle—E. 4. Birthdate—3-21-79. 5. Sex—☐ Male ☐ Female. 6. Date taken in custody—1/22/83 Time 4:15 P.M. Address—110 Wright City—Neenah State—Wisconsin Zip—54956 County—Winnebago 8. Telephone —None Father's Name & Address—DeShaney, Randy A.

110 Wright Neenah, Wisconsin Telephone—Home none Mother's Name & Address—DeShaney, Melody E.—whereabouts unknown Guardian/Legal Custodian's Name & Address—DeShaney, Randy A. 110 Wright Neenah, Wisconsin Requesting Agency Name—Neenah Police Dept. 13. Request Date:—1-22-83 Time:—4:15 PM 14 Agency Case No.— Agency Address—Doty Street, Neenah 16. Agency Representative—Keith Nelson Telephone—(414) 729-4677 Reasons for Taking Child into Physical Custody—(Check All That Apply)—☐ Warrant Capias Judicial Order Dated:————. ☐ Issued by Judge ———— County———— Court————

☐Reasonable Belief

☐ Capias or Warrant or Fugitive ☐Run Away From Home [X] Suffering from Illness or Injury or in Immediate Danger ☐ Violated Court-Ordered Supervision ☐ Capias or Warrant From Other State (Specify)————
☐ Committing or Has Committed Crime (Specify)————
☐ Violated a Civil Law or Local Ordinance Punishable by Forfeiture (Specify)————

☐ Violated "Continuation of Custody" Order Dated———— Reason Child Not Immediately Released—Physician ordered the child admitted to the hospital for investigation of possible child abuse. Intake Worker Authorization (Intake Worker Complete Items 1 & 2 and 19-27. Distribute copies.) Criteria for Holding a Child in Physical Custody (s. 48.205) —(Check All That Apply) A. If the named child is not held he/she will—(1) ☐ commit injury to the person or property of others (2) ☐ cause injury to self (3) [X] be subject to injury by others. B. ☐ the parent, guardian or legal custodian of the named child is—☐ unavailable ☐ unwilling ☐ unable to provide adequate supervision and care. C. ☐ The child will run away or be taken away so as to be unavailable for proceedings of the Court, Children's Division. ☐ Criteria of s. 48.205 Not Met. Named Child Released To: ☐ Self ☐ Parent/Guardian. Parents Notified? ☐ Yes [X] No Date— Time— A.M./P.M. Worker— 22. Child's Rights Given? ☐ Yes [X] No Worker— Being Duly Authorized by the Circuit Court, Children's Division, I Hereby Order The Following:

A. ☐ Immediate Release To: ☐ Self ☐ Parents ☐ Guardian ☐ Legal Custodian ☐Home of Relative ☐ Responsible Adult B. ☐Placement in NON-secure custody at (Specify): Theda Clark Hospital ☐ Home Detention Requested ☐ Rules Issued. • • •
Intake Worker—Dan Venne 26. Signature—
27. Authorization Date & Time—1-22-83 4:15 P.M.

INTAKE OFFICE

(NON-LAW ENFORCEMENT REFERRALS)

2. County— Code— Last Name—DeShaney First—Joshua Middle— 4. Alias/Nickname—Josh 5. Age—3 6. Birthday—03/21/79 Sex [X] M ☐ F Address—110 Wright Avenue, Apt. #4, City—Neenah State—WI 8. County—Winnebago 9. 1 white 2 black 3 Native Am 4 Span Am 5 Oriental Race 6 Other — [1] 11. School Attended/Place of Employment—
12. Grade/Occupation— Father (Natural, Step, Foster)—Randy A. Address 110 Wright St. #4, Neenah Mother (Natural, Step, Foster —Melody Address—Unknown Telephone—Home none Marital Status—divorced Legal Custodian/Supervising Agency—Randy A. DeShaney Address—110 Wright St. #4, Nennah Telephone—Home none Marital Status—divorced Referring Agency —Winnebago Co. Dept. of Soc. Serv. 17. Office Telephone —725-7781 18. Name of Referring Officer—Ann L. Kemmeter 20. File Case No.—FS-17576-CW. In January of 1982, the Access Unit of this Department was contacted by a Christine DeShaney concerning the welfare of Joshua DeShaney, who at that time was in the custody of his father Randy. Christine was concerned that Randy had hit Joshua causing marks on Josh's body. At that point in time, Randy had given physical custody of Joshua, to Joshua's grandfather living in Stevens Point so services were not needed. In March of 1982 Randy and Christine DeShaney attended Marriage Assessment Group offered by Family Court because of their pending divorce.

Referral to Court Intake (Cite statute no.(s) if known)

Whose has been the victim of physical abuse including injury which is inflicted by another by other than accidental means. Joshua was admitted to Theda Clark Hospital by his primary caretaker and aunt, Marie DeShaney because of numerous bruises on Joshua's body. Allegedly the bruises were caused when a two year old playmate struck Joshua with a metal toy truck. According to the attending physician's examination there was a suspicion of child abuse and the matter was to be investigated. • • •

State of Wisconsin
Circuit Court—Branch
Children's Division

NOTICE OF HEARING

TO: RANDY E. DESHANEY
34 W. Tennessee Avenue
Oshkosh, WI 54901

1. Court Case No.—84 IV 155 2. County—Winnebago 3. Case Type ☐ Delinquent [X] In Need of Protection/Services ☐Ordinance/Civil Law Violation ☐ Other—Specify: 4. Intake Case No.—JI 202 5. In the Interest of: JOSHUA E. DESHANEY 6. Birthplace—3/21/79 7. Hearing Location: Room 194, 420 Jackson St., Oshkosh, WI 8. Hearing Date—May 7, 1984 at Time 11 a.m. 9. Notice is hereby given that on the date and at the time and place stated above, the Court, LEO W. MACK, CT. COMM. presiding judge, will hear a petition describing this matter, a copy of which is attached.

The proceeding will be of the following type: INITIAL APPEARANCE.

You may appear alone or with an attorney of your choice. If the hearing is for "waiver of juvenile jurisdiction," the child must be represented by counsel.

If the child, the parents or other interested parties are unable to retain a lawyer because of financial reasons, the State Public Defender may appoint an attorney to represent them at public expense. If a question of ability to pay is raised, proof may be required to justify the payment at public cost. The parents or legal guardian of the child may be ordered to reimburse the state or county for the cost of legal counsel provided to the child based on ability to pay.

10. By the Court: Illegible name, Presiding Judge/Clerk of court. 11. Date of Notice 4/26/84 12. Form of Service Ordered by the Court—[X] Regular Mail—Date Sent 4/26/84 ☐ Personal Service—Date Attempted/Delivered—☐ Certified Mail—Date Sent————

cc: Father: Asst. C.C.; Ann Kemmeter; Atty. Pat Seubert, G.A.L.; and Public Def.

State of Wisconsin
Circuit Court—Branch
Children's Division

ORDER APPOINTING COUNSEL
OR GUARDIAN AD LITEM

FOR OFFICE USE ONLY 1. Court Case No. 84-JV 155 2. County—Winnebago 3. Case Type—☐ Delinquent [X] In Need of Protection/Services ☐ Ordinance/Civil Law Violation ☐ Other Specify———— 4. Intake Case No.—JI 202 In the Interests of: JOSHUA E. DESHANEY, a person under the age of 18. Child's Address—Mercy Medical Center, 631 Hazel St., Oshkosh, WI 54901 Reasons for Appointment—Check all that apply: ☐ Child re-

quested Counsel ☐Court on its own motion has determined that Counsel should be appointed [X] Appointment of Guardian Ad Litem for the child is desirable within the meaning of S. 48.23(3)(3m) 8. Name of Attorney Appointed—PATRICK SEUBERT 9. Type of Appointment—☐ Counsel [X]Guardian Ad Litem 10. Hearing Date—May 7, 1984 Time at 11 a.m. 11. Presiding Judge—LEO W. MACK, CT. COMM. 12. A petition has been filed relating to 48.13(10) against the above-named child.

IT IS ORDERED THAT, for the reasons above specified, the above-named Attorney, who is admitted to practice in the State of Wisconsin, is hereby appointed to serve as Counsel or Guardian Ad Litem for the child as indicated above and is to be present in Court on the date at the time specified. 12. Judge Presiding—BY THE COURT: LEO W. MACK/s/ 13. Order Date—4/26/84

CONSENT TO ACT

Attorney Note: Please sign and return the original copy to the Clerk of Court or the Clerk of Court for Juvenile Matters. I hereby accept the above appointment and will discharge the duties thereof to the best of my ability.

14. Attorney's Signature—PATRICK SEUBERT /s/ 15. Acceptance Date—4/26/84 cc: Father; Asst. C.C.; Ann Kemmeter; Atty. Pat Seubert, C.A.L.; and Public Def.

ATTACHMENT "I"

Complaint Report
Police Department
Neenah, WI 54956

Complaint No. 236606
Winnebago County Department
of Social Services Jan 27, 1982

INFORMATION 3. Classification— Location of Complaint—114 Winneconne Avenue 5. Area Classification—Variant or Business Name—Christine DeShaney 7. Phone No.— Variant Address—114 Winneconne Avenue Person Reporting Complaint—Dave Krizensky 10. Phone No.—Person's Address— Date and Time of Occurrance—01-31-82 13. Date and Time Reported—01-25-82 10:12 A.M. How Reported—phone 15. Shift Commander—Homan 16. Units Assigned 17. Dispatcher—Candy 19. D.O.B. 21. Phone No.—

SGT POHLMAN received a call from DAVE KRIZENSKY who stated his client CHRISTINE DESHANEY is serving divorce papers on her husband, RANDY DESHANEY next Monday 01-31-82.

RANDY has a 2 year old son with him that is from his previous marriage. The mother of the boy is in Wyoming. In the past RANDY has hit the boy causing marks and is a prime case for child abuse. CHRISTINE is afraid that when she leaves next Monday and leaves the boy alone with RANDY something may happen. They both just wanted all of this information on record as they will now be reporting this to the Department of Social Services.

Assigned Officer & No.—Illegible Name 24. 2nd Officer & No— 25. Supervisor & No.—Lt. Homan 135 26. Date—01-25-82 27. Assigned to—N.D. 28. By Supervisor & No.—Parratt 5 29. Date—1-21-82.

ATTACHMENT "J"

Deponent	Date(s)	Pages
Ann Kemmeter	8/27-29:85; 10/1/85; 10/3/85	691 (5 volumes)
Cheryl Stelse	10/2-3/85	242 (2 volumes)
Tom Hoare, MSW	9/10/85; 9/24/85	128 (2 volumes)
T.L. Bowers, M.D.	9/10/85	98
Patrick Busha	9/10/85	46
R. Gehringer, M.D.	9/11/85	82
P. Pleuddeman, M.D.	9/11/85	26
Paul Michler	9/11/85	31
Keith Nelson	9/12/85	82
Ann Marshall	9/25/85	54
A. Sagmeister	9/25/85	28
Ruth Davis, MSW	9/25/85	42
John Bodnar, Esq.	9/25/85	59
Chris Howe Feaks	9/24/85	69
D. DeRozier, Ph.D.	10/3/85	70
H. DeMorest, M.D.	9/11/85	15
Marie DeShaney	9/11/85; 9/26/85	210 (2 volumes)
Pete Donner	10/2/85	22
Melody DeShaney	10/24/85	231
Myrna Bridgewater	10/24/85	91
Linda Brekke	11/20/85	132
Steven Bavolek	11/22/85	136

Marsha Salus	11/26/85	115
Chris Holmes	11/25/85	27
Richard Krugman, M.D.	11/19/85	140
Helen Woodard	12/12/85	51
Linda Krach, M.D.	1/29/86	89
Cheryl Huenink	1/25/86	199
Marc Letellier, M.D..	1/29/86	59
Bashar Kayali, M.D.	1/29/86	49
Douglas BeSharov	1/31/86; 2/1/86	252 (2 volumes)
G. Leutterman	1/26/86	176

ATTACHMENT "K"

MEMO TO JUVENILE COURT INTAKE

January 27, 1983

To: Juvenile Court Intake

From:_____

Ann Kemmeter, Agency Representative
Winnebago County Department of Social Services

Re: Joshua DeShaney, d.o.b. 3/21/79 (3)
110 Wright Avenue, Apt. #4
Neenah, Wisconsin 54956
No Phone

BIRTH FATHER: Randy A. DeShaney, d.o.b. 1/3/58 (25)
110 Wright Avenue, Apt. #4
Nenah, Wisconsin 54956

BIRTH MOTHER: Melody DeShaney
Whereabouts Unknown

PRIMARY CARETAKER: Marie DeShaney, d.o.b. 12/9/59 (23)
110 Wright Avenue, Apt. #4
Nenah, Wisconsin 54956

REASON FOR REFERRAL:

The Winnebago County Department of Social Services initially alleged that Joshua DeShaney was the child alleged to be in need of protection and services under Wisconsin Statutes 48.13, who has been the victim of physical abuse including injury which is self-inflicted or inflicted by another by other than accidental means. Temporary physical custody was granted to Theda Clark Regional Medical Center on January 22, 1983, at 4:15 p.m. The child was hospitalized pending a complete investigation of the numerous and unexplained bruises that appeared on Joshua's body.

PRECIPITATING SITUATION:

Joshua was admitted to Theda Clark Regional Medical Center on Saturday, January 22, 1983, at 1:34 p.m. by his primary caretaker and aunt, Marie DeShaney, stating that another child of approximately two years of age, struck Joshua on the forehead with a metal truck. Joshua had a bruise approximately three inches in diameter across the forehead with a textured pattern on the surface. There was another blue bruise on his right cheek, along with an abrasion, a small abrasion on the back of his head, a bruise the size of a 50¢ piece on the left scalp, smaller bruises down his spine and arms. Several of these had a dotted texture pattern to the bruises. Joshua also had bruises on his arms and legs and a bruise across both buttocks,

upper thighs, ankle and heel. Dr. Gehringer, pediatrician from the Nicolet Clinic, examined the child and recommended that the child be admitted to the hospital because of the multiple contusions with possible child abuse. Tom Hoare, social worker at Theda Clark Regional Medical Center, contacted me as well as the Neenah Police Department, Det. Keith Nelson, to assist in the investigation. The father of the child was out ice fishing and therefore unable to give immediate consent for the child to be hospitalized. We requested temporary physical custody for placement at Theda Clark Regional Medical Center which was granted by Dan Venne, Intake Worker, at approximately 4:15 p.m. in the afternoon.

Complete statements from Marie DeShaney, the primary caretaker, and of Randy DeShaney, birth father of the child, were taken by Det. Nelson that same afternoon in my presence. A copy of their statements as well as the report from Det. Nelson are attached to this memo. Basically, even though the two did not have time to corroborate their stories, they appear to be in agreement regarding Joshua's behavior, the types of disciplinary techniques used with the child, and expectations of the child. Both of them deny abusing the child and further both stated that they had intentions of contacting a pediatrician from Nicolet Clinic on Monday, January 25th to make an appointment for a complete physical for Joshua because of the extensive bruises on his body and the fact that they were not healing very quickly. Det. Nelson and myself found Marie DeShaney and Randy DeShaney to be very cooperative in the sharing of information.

On Monday, January 25th, Tom Hoare, social worker from the hospital, and myself again interviewed Randy De-

Shaney, Marie DeShaney, and Randy's ex-wife, Christine DeShaney. Once again all three were very cooperative and open in sharing information with us and there appeared to be no basis to the establishing of child abuse or child neglect. Rather, it appears they were lacking in parenting skills and may not have provided adequate supervision to Joshua and two other children Marie takes care of, her son Rusty and a two year child by the name of Andy. Andy is the son of Claudette Goetsch. Det. Nelson also interviewed neighbors of the DeShaneys who share the same apartment building with their responses being that while they hear crying and they hear fighting, they do not hear any clapping or constant screaming so as to indicate that a child was in danger.

Both Marie and Randy also felt that Joshua's behavior has been deteriorating for the last month and one-half with more enuresis and encopresis. He seems to be playing rougher and will pull his hair out of his head, especially when father is leaving. There are two bald spots on each side of the child's head about two inches in diameter each. Both Marie and Randy also indicate the child is biting himself and pinching himself. In view of that information, a request was made for a complete psychological exam to be completed by Mr. Donald Derozier.

CHILD PROTECTION TEAM MEETING AND RECOMMENDATION:

On Tuesday, January 26, 1983, a Child Protection Team meeting was held with staff from the emergency room and pediatrics being present, along with Dr. Donald Derozier, clinical psychologist, Dr. Gehringer, pediatrician, Tom

Hoare, social worker, Cheryl Stelse, supervisor of the Child Protective Service Unit, John Bodnar, Assistant Corporation Counsel for Winnebago County, Det. Keith Nelson of the Neenah Police Department, and myself. The general consensus was that this child had not been physically abused, but undoubtedly had not been parented appropriately, thereby being hurt possibly by playmates or by himself. Dr. Derozier felt that the hair pulling was a result of acuate anxiety on the child's part when father left the home to go fishing or go on errands. The child had lived with his birth mother until 14 months of age, and there is strong suspicion of alleged neglect and possibly abuse during his infancy. Dr. DeRozier felt this could account for the anxiety in the child today. It was the recommendation of the Child Protection Team that the child be returned to the father, that he live independently of the primary caretaker, Marie DeShaney, that the child be enrolled in a preschool program, preferably Headstart, and that the father continue to work with the Department to increase his knowledge of child development as well as to increase his parenting skills. Randy DeShaney entered in a social service agreement indicating that he would be more than happy to cooperate with the Department and would be accepting of any and all help that would be made available to him. Dr. Gehringer would like to follow this child for the next several months with the next appointment in two weeks and thereafter, every two months for an indefinite period of time.

I therefore recommend that the temporary physical custody order and any further allegations against this family be dismissed at this time but will refer it back into Court

should there be any further injuries to this child of an unexplained origin.

The father signed releases for Consent of Medical Information and upon my receipt of such, I will forward it to you for your records.

AK/la

(Certificate of service omitted in printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

(Caption omitted in printing)

AFFIDAVIT

STATE OF WISCONSIN)
) SS
MILWAUKEE COUNTY)

WAYNE M. YANALKA, being duly sworn on oath deposes and states as follows:

1. That he is an attorney licensed to practice law in the State of Wisconsin and is associated with the law firm of Simarski & Stack, Ltd., attorneys for defendants, Ann Kemmeter and Cheryl Stelse, in the above-referenced action.

2. That on January 31, 1986 and February 1, 1986 plaintiffs' counsel conducted the deposition of Douglas Besharov; that attached hereto and marked as Exhibit "A" are excerpts from said deposition which are incorporated herein by reference as if fully set forth.

3. That on August 27, 1985, August 28, 1985, August 29, 1985, October 1, 1985 and October 3, 1985 plaintiffs' counsel conducted the deposition of the defendant, Ann Kemmeter; that attached hereto and marked as Exhibit "B" are excerpts from said deposition which are incorporated herein by reference as if fully set forth.

3. That on September 25, 1985, the deposition of Ann W. Marshall was conducted; that attached hereto and marked as Exhibit "C" are excerpts from said deposition

which are incorporated herein by reference as if fully set forth.

4. That on September 25, 1985, the deposition of Ruth A. Davis was conducted; that attached hereto and marked as Exhibit "D" are excerpts from said deposition which are incorporated herein by reference as if fully set forth.

5. That on September 11, 1985 and September 26, 1985 the deposition of Marie E. DeShaney was conducted; that attached hereto and marked as Exhibit "E" are excerpts from said deposition which are incorporated herein by reference as if fully set forth.

6. That on September 11, 1985 the deposition of Robert E. Gehringer, M.D. was conducted; that attached hereto and marked as Exhibit "F" are excerpts from said deposition which are incorporated herein by reference as if fully set forth.

7. That on September 10, 1985 the deposition of Timothy L. Bowers, M.D. was conducted; that attached hereto and marked as Exhibit "G" are excerpts from said deposition which are incorporated herein by reference as if fully set forth.

8. That on January 29, 1986 the deposition of Marc Letellier, M.D. was conducted; that attached hereto and marked as Exhibit "H" are excerpts from said deposition which are incorporated herein by reference as if fully set forth.

9. That on October 2, 1985 and October 3, 1985 the deposition of the defendant, Cheryl F. Stelse, was conducted; that attached hereto and marked as Exhibit "I"

are excerpts from said deposition which are incorporated herein by reference as if fully set forth.

10. That all of the above depositions were taken in relation to the above litigation and that the excerpts therefrom incoroprated into this Affidavit are being filed with the Court in support of the defendants various Motions.

Dated at Milwaukee, Wisconsin, this 7th day of April, 1986.

/s/ Wayne M. Yankala
WAYNE M. YANKALA

(Jurat omitted in printing)

EXHIBIT A

(p. 144) function and role of the social worker changes. This is just my own internal—it saves me writing a lot of words. I know exactly what that means.

Then I said, "In family service mode Ann K. said she was not looking for facts."

Q. Where did that come from?

A. It came from Mr. Yankala's description to me of what she—I guess what she said she did in that mode.

That's the sum total of my briefing this morning.

Q. This expression that in—as your handwritten note says, "In family service mode, she was not looking for facts."

What does "she was not looking for facts," mean?

A. It means she was there not as an investigator—I'm taking it to mean—but as a therapeutic counselor.

Those are my words.

Q. How does that tie in with the circumstances you described earlier of where a case worker by firsthand observation acquires information that triggers an obligation to act?

How does this business of not looking for facts fit in?

A. All therapeutic counselors or social workers are under an obligation to report suspected child abuse.

In that mode, Ann Kemmeter becomes, like any other responsible, legally mandated social worker, case worker. So (p. 145) it's not—the phrase is not mine. I don't know if it's Ms. Kemmeter's or what.

The point is, she is not an investigator. She's a therapeutic counselor at that stage, but she has the legal powers only of a therapeutic counselor, which are zilch except for reporting suspected child abuse.

Q. Where the now social worker, to use your description of it, comes into possession of information that calls for digging into the facts, is she supposed to go fill out a report and have a different person make the investigation, or is she supposed to follow up directly herself?

How should that be done?

Mr. Yankala: I'm going to object to the question as vague as to whether you mean it in the context of the 48.981 report that would trigger the legal duty to investigate or whether it's some other sort of investigation you're referring to.

The Witness: I was taking it as legal duty to investigate. That's how I was interpreting the question.

I'm not sure how it works in Winnebago County and I wouldn't presume to guess.

In most large metropolitan areas there is a separate family service there. Which, by the way, would—so it clarifies the division here, that it would—it makes the workers' more limited responsibility much clearer.

* * *

(p. 250) that she had concerns.

I think that's right. If that's what you are looking for. She wanted some help. It's also of the fact that she kept trying. She was doing everything she could, and more so, it looks like.

Q. I want you to assume, please, that in November and December 1983, that Ms. Ann Kemmeter and her team mate—

A. Oh, I'm sorry, was the team mate appointed in the early stages, during that time when the team met?

Q. No, no, November of '83, which would be ten months later.

A. I'm sorry.

Q. Assume that in November and December of '83, both Ms. Kemmeter and her team mate, both harbored strong suspicions, or to phrase it, with the noun—with the verb "strongly suspected" that Joshua was being abused.

If that should be the case, would that trigger any obligation in your view?

A. I think we, a little bit, went through this yesterday.

If they had the kind of—is the testing in Wisconsin, reason to suspect, or reason to believe, for report of child abuse?

Maybe we ought to lock in that right now?

Q. You have the statute.

(The witness peruses the document.)

(p. 251) A. Okay, there's reasonable cause to suspect.

Assuming, as I talked about yesterday, they had reasonable cause to suspect. They had it. They suspected it, subjective, we're talking about a subjective test. And that reasonable cause was not overriden or negated or whatever the word would be, by the fact that the team had met on very similar information and said there was nothing to proceed on.

Assuming that there was an independent life to that suspicion, independent of the facts and the kinds of facts, kinds, not exact facts, that had been fully hashed out with the committee, then a reasonably diligent child protective investigation should have been commenced.

Mr. Sullivan: I think we have arrived at the pumpkin patch.

Mr. Mingo: Does that mean you're done?

Mr. Sullivan: I sincerely thank you very much.

Mr. Mingo:: I will feel comfortable if you waive signature.

The Witness: : I'll waive it, then.

(Whereupon, at 12:25 o'clock, p.m., the taking off the deposition of DOUGLAS BESHAROV was concluded.)

EXHIBIT B

(p. 113) Q And did you accept that as being accurate?

A Yes.

Q Did you visit Joshua and find cigarette burns on his face?

A I suspicioned that they may have been cigarette burns.

Q When did you make that visit?

A On November 9th, 1983.

Q What explanation did you get for what you believed to be cigarette burns on his face?

Mr. Mingo: Well, just a second. That's a misstatement of her testimony. Her testimony was not that she believed them to be but that she had a suspicion they may have been.

BY MR. SULLIVAN:

Q Did you write a report that you believed they were cigarette burns?

Mr. Mingo: If you want to look at your reports—

The Witness: There not here.

Mr. Mingo: If he wants to ask you that question, take time to go get your report.

Mr. Sullivan: We've had enough stalling and bullshit today. We'll finish up for today.

Mr. Mingo: We're not going to have anymore comments like that on the record. I don't want that type (p. 114) of language used in front of my client, and I don't like the implication, and I don't want it to happen again.

Mr. Sullivan: I don't like the implication either, Mark.

Mr. Mingo: Then don't make it. That was totally uncalled for.

Mr. Sullivan: We agree to disagree.

BY MR. SULLIVAN:

Q On the occasion that you saw burns or what you took to be cigarette burns on Joshua's face, what explanation was given to you?

A Again, I would like to state that that was purely a suspicion of mine that they may have been cigarette burns. I was told by the family that Joshua had been outside and that he had scraped his chin on the sidewalk.

Q Where were these what you took to be cigarette burns or what you suspicioned to be cigarette burns, where were they located?

A On his lower jaw of his chin. In this area. How can I describe it?

Q Well, you saw it, and I didn't, so please describe it as best you can in words.

A They were noticeable on the—the bottom of his jaw towards the front, going towards the front to his chin, front of his chin.

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(p. 6) University of Wisconsin-Oshkosh.

Q When did you graduate from Neenah High School?

A 1961.

Q That would have been in the spring?

A June of '61, right.

Q And did you enter UW-Oshkosh in the fall of '61?

A Yes, I did.

Q I take it from the fact that you attended that you didn't graduate directly in an unbroken sequence; is that correct?

A From the high school I entered UW-Oshkosh and remained there until I graduated in 1966.

Q And your bachelor's degree was in psychology?

A That's correct.

Q Would you describe for me generally the areas of course work that you studied in your bachelor's program.

A When I began my college education, I had started in lower elementary education. I changed my major to psychology. So I have a number of educational credits as well as those required for the degree in psychology.

Q Did some part of your bachelor's program involve social work courses?

A Social work, no. The university did not have a social work department at that time.

Q Did you live at home when you went to UW-Oshkosh?

* * *

(p 12) A No, I have not.

Q Is this the first marriage for each of you?

A Yes, it is.

Q In addition to your high school diploma and your Bachelor of Science Degree in psychology, have you taken any other formal credit educational programs?

A Yes, I have.

Q Would you tell me about those, please.

A They were credits at a graduate level in the field of social work.

Mr. Mingo: Read back the last question and the last answer, please.

(The last question and answer were read.)

Mr. Mingo: Are you looking for some document in the file in front of you?

The Witness: I was looking for the transcript of the graduate credits.

Mr. Mingo: And you don't have that?

The Witness: Apparently it's not in my personnel record.

Mr. Mingo: Do you want her to locate that or what?

Mr. Sullivan: What I'd suggest we do is at the break—

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(p. 18) although we have access to pamphlets and brochures announcing in-service training, and it is up to us to make a request if there is something of interest we would like to attend.

Q I assume the kind of in-service training you get consists of both things that are done here and maybe programs outside as well?

A Correct.

Q Have you over the years availed yourself of either or both of those kinds of in-service training?

A Yes, I have.

Q And who keeps record of what programs you've participated in and what training credits you've earned?

A Basically, I do.

Q Does somebody in— Is there a personnel officer in your department or somebody with personnel functions?

A Correct.

Q If you go— Well, let's just say, for example, that there's a half-day program conducted in the department, and you attended. Are you supposed to write a letter or something like that so they have a record that you attended?

A If it were a mandatory meeting, there would not necessarily be a record kept. If it was an optional meeting, it would be up to me to make a request to my

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(p. 26) Social Services, I believe, even since I was hired back in 1967, has always had some type of a satellite office in the Neenah-Menasha area, so there have been several moves from various office places. When we moved into this particular building. I don't recall the year.

Q Have you— Let's say since 1981, have you been assigned working out of whichever address they were using for a satellite in the northern end of the county?

A Have I worked the northern end of the county since 1981, is that what you're asking?

Q It wasn't, but let me ask you that first. Since 1981 to the present, have you been working the north end of the county?

A Yes.

Q Okay. And since 1981 has your own office, your personal office, been up in the Neenah-Menasha area?

A Yes, it has.

Q As opposed to here in Oshkosh?

A Yes.

Q And there have been moves, but when you were at which address is unclear?

A I don't recall.

Q Okay. How far is Neenah from the Oshkosh DSS office?

A Fifteen miles.

Q That's not a flippant question. I'm not familiar.

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(p. 34) your degree and coming to this department?

A Yes.

Q When did you go to work at Bethesda?

A September of 1966. I don't recall the exact date.

Q That's fine. What did you do over that summer?

A Over that summer I reached for full-time employment.

Q And what was your reason for desiring or choosing to leave Bethesda?

A Primarily because I missed the Fox River Valley area. This is where I was born and raised and wanted to return back to this area in general.

Q In addition to applying to the Winnebago County DSS, did you make any other efforts to find employment back in the Fox River area?

A If I recall, I wrote a letter to the Fond du Lac County Department of Social Services and Outagamie County Department of Social Services.

Q What became of those inquiries?

A I really don't recall.

Q Would you tell me what in-service training programs you remember, let's just say in the last five years,

you remember that you've participated in either internally or outside.

A I have attended several. They have included—

Q Let me interrupt to make it easier for you. This isn't a (p. 35) memory test, and it's not points off if you leave one out. I'm only asking for the ones that you're able presently this morning to remember.

A I recall attending the—a National Conference on Child Abuse and Neglect in Milwaukee, I recall attending a session in Appleton on child sexual abuse with Dr. Zaphirus, I recall attending a seminar in Appleton, again, of, I believe, the title was to the effect of children raised in alcoholic families and the effect. That was by Claudia Black.

There were several that I have attended sponsored by the mental health—Winnebago County Mental Health Institute to include, I believe, acute anxiety attacks. I believe there's something on depression, there have been a number of them, and I'm sorry, I don't really recall all of them in the last five years.

Q Okay. These ones that you mentioned that do bring themselves to mind, they're all, I take it, in approximately the last five years?

A Yes.

Q I assume that if we go back eighteen years, you've been to others, but it's not a memory test.

A I certainly have.

Q You say that you went to a seminar in Appleton on—generally on alcoholic families and the effect of that on

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EXHIBIT C

(p. 20) anything really significant on the emergency room report that wasn't on the reporting form.

Q Did you indicate to Ann what the diagnosis of Dr. Bowers was?

A At that time all I could tell her is about the laceration, yes.

Q And what did you tell her the diagnosis of Dr. Bowers was?

A I would have told her just this, the right forehead laceration, I would have described what was found. There is no official diagnosis on this form, or—well, here it is, laceration of forehead, that is here.

Q You would have—

A I would not have said, "The diagnosis is."

Q What would you have said?

A I would have said all these things here that are on the abuse report. See, there's additional information.

Q You would have told her what is handwritten after the subheading, "Nature of child's condition"?

A Yes.

Q And you would have said, "Right forehead laceration," and what you previously read to us?

A Yes.

Q Was it your understanding that there had been a formal diagnosis of child abuse in this case on November 30, (p. 21) 1983?

A That there was?

Q Yes.

A No.

Q When one of these reports such as the one that we've marked as Exhibit A—strike that. Can you tell me whether—strike that.

When a report such as the one that we've marked as Exhibit A is generated within the hospital and eventually comes across your desk, does that necessarily mean that there has been a diagnosis of child abuse?

A It does not.

Q Can you tell me how common it is for you to see one of these reports come across your desk, in other words, is that something rare or something that happens quite often at Mercy?

A I will give an estimate, I don't know exactly, but I would estimate there may be two or three per month.

Q And when you receive these reports, do you always follow through with them in the same manner as you told us you did in the DeShaney case?

A Generally I would say, yes.

Q Do you recall whether or not you had any additional contact with Ann Kemmeter relative to the November 30, 1983 hospital visit other than what you've told us about?

* * *

EXHIBIT D

(p. 23) A Where I repeated the information to her.

Q Tell us what you remember about that conversation, who said what to whom?

A Oh, my goodness.

Q You know, as best you can?

A I don't think I can remember any—

Q I'm not asking you to quote anybody, tell us what that conversation was about?

A I just told her that I had found Joshua alone the day before and that I had put in a phone call to her and that I felt that she should know this information, that it should be a part of her record that I had found the child alone, and that I told her that I would back that conversation up with a letter.

Q And the reason for that was what?

A For documentation, that it should appear that the child was left alone on that date, and that in my opinion that this constitutes I think a neglectful situation.

Q And did she ask you for that documentation?

A I am not sure whether she asked for it or I told her I was sending the letter. I cannot remember which of the two it was. I can't remember.

Q Did she tell you anything about how come you hadn't heard from her before the next day?

A Other than she didn't get the message until that morning.

(p. 24) Q Did she indicate anything to you either about how come she didn't get the message or what her reaction to that was?

A No. No. No, the only thing that she did tell me is that if I had a situation like that in the future it would probably be wise for me to have gone either to the police or to another person in the department, so make sure my message got through.

Q Instead of just a switchboard kind of person?

A That's right.

Q I just used the word switchboard, and maybe that's not fair. Were you going through a county operator or—

A No, I was talking to a person answering the phone at the department in Neenah.

Q Do you know what that was?

A No, I don't.

Q Or did you know at that time?

A No.

Q It was a stranger to you?

A She was a stranger to me.

Q Did you and Ann discuss Joshua's status and the question of whether he was being neglected or properly cared for?

A On that visit or on that phone call?

Q Well, in this couple of days you're telling us about?

A Could you be more specific?

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EXHIBIT E

(p. 58) Q Okay. And what, if anything did she say to you about this fainting and the headaches and so on?

A She didn't say too much because I told her if it kept up, I was going to take him to the doctor. I believe that took care of that.

Q Did you mention to her how long it had been going on?

A Yes, I did.

Q You had some discussion with Mr. Yankala about an injury on Joshua's face, his chin I think, if I remember, that either was a cigarette burn or a sidewalk burn and it's not clear to me which. Do you remember talking about that?

A Yes, I do.

Q Is that the time that Mrs. Kemmeter asked you if that was a cigarette burn?

A Yes, she did.

Q What did you tell her?

A I told her, no, it was not a cigarette burn.

Q Did you explain to her what it was?

A I told Joshua to tell her what it was.

Q What did he tell her?

A That is was from scraping his chin on the sidewalk.

Q That's the one you told us about where he I guess knelt down on his hands and knees and was rubbing his chin?

A Yes.

* * *

(p. 108) Q What do you remember about her?

A Nothing real special.

Q She just seemed to tag along sort of?

A Yes.

Q Did you have any talks with her or was she just there while Ann was talking?

A I believe they mentioned a couple things, but I don't remember exactly what it is.

Q, She was polite enough?

A. Yes.

Q One of the things that happened was that the Headstart lady came to the house one time and Joshua was the only one there. Do you remember about that?

A Yes.

Q What do you remember about that?

A Joshua didn't want to go down to make a phone call with us, which is only three blocks away, and he said he just wanted to take a nap and sleep. So we said,

"Fine," because we'd be right back. We knew he wou'dn't get in trouble or nothing.

Q Where did you have to go to make that phone call?

A Up to Main and New York. Right on the corner there.

Q Is there an outside pay phone?

A Yes, there is.

Q And somebody went with you. Who was that?

(p. 109) A Randy and Rusty. We all went except for Josh.

Q What was that about?

A I think we went to call Randy's dad, I think.

Q Do you remember for what?

A Just to talk to him, I guess. Randy wanted to talk to him, see how he was doing.

Q How did Joshua get along with his grandfather?

A Great.

Q Did he know you were going to call grandpa?

A Yes.

Q And so about how long do you figure you were down doing that?

A I'd say about 15 minutes.

Q Did you walk or did you take the car?

A Walked.

Q Sometimes when lawyers ask people questions they go down their own lists and completely miss the

point, and between us we have covered a lot of stuff. I appreciate how helpful you have been. So far as all the stuff that happened with Joshua and talking care of him and all the accidents and injuries and those kinds of things, is there anything that you remember that you think is important that you haven't told us about?

A A couple things.

Q What would those be?

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EXHIBIT F

(p. 49) A That's right.

Q And you found no further signs of child abuse or possible child abuse on January 31, 1983?

A That's right.

Q What was your opinion on January 31st of 1983 as to whether or not this was an abused child?

A It was no different than on the 25th.

Q Then according to your notes there was next an emergency room visit on March 14th of 1983?

A That's right.

Q What was that all about?

A Joshua had a facial laceration.

Mr. Sullivan: This is March 14th you're speaking of?

The Witness: March 14, 1983. Joshua was seen by the emergency room physician, Dr. DeMorest.

BY MR. MINGO:

Q This was again at Theda Clark?

A At Theda Clark.

Q Before we get on with that, let me ask you this: Were you somehow sent all the reports every time Joshua entered the emergency room at Theda Clark?

A They're sent to his chart. I would not be made aware of those.

Q Sent to his chart where?

(p. 50) A There's a record, this record. This file copy is sent to the Nicholet Clinic to be entered in Joshua's medical record. It doesn't come across my desk.

Q You could go to that chart from time to time to see whether or not there were any subsequent emergency room visits?

A That's right.

Q Can you tell us what that emergency room visit was about on March 14th of '83 at Theda Clark?

A He had a laceration of his forehead.

Q And was seen by Dr. DeMorest?

A Right.

Q Is there any indication in the hospital records from Theda Clark of March 14, 1983 indicating child abuse or possible child abuse?

A Not on the record that I have.

Q And the record you have is what? What's that called?

A The emergency room sheet. There would probably be a dictated report that I would not receive.

Q What was the next hospital contact that Joshua DeShaney had according to your office notes?

A The next hospital contact was on May 8th when he had the sutures removed. I had put those sutures in on the 3rd in my office.

Mr. Sullivan: Off the record.

(p. 51) (Discussion off the record.)

BY MR. MINGO:

Q Before we get into why he was in the hospital, when was the next time Joshua was seen either by you or at a hospital for any reason according to your Nicholet Clinic office notes?

A Okay. I saw him on May 3rd, '83. He had presented, apparently, to the emergency room. They contacted my office and sent him to my office.

Q Would that have been the emergency room at Theda Clark?

A That's right. I believe so. I'm not positive of that, but I believe so. He had reportedly been playing with his wagon in the apartment and fell injuring his lip. He had a laceration of his upper lip that required several sutures to close the laceration. I recommended that his sutures be rechecked in four days and I notified his social worker regarding the injury.

Q Would this notification of the social service worker—Strike that.

The social service worker is someone from the county or someone from the hospital?

A Someone from the county. I would have called them on the phone.

Q And we don't have any record of what you said to the social service worker?

(p. 52) A No.

Q Can you give us some indication of what you said to the social service worker?

A That Joshua was again in my office, that he had not been to my office for his three or four week scheduled visit, but that he had had a laceration in the emergency room previous to me seeing him and I was seeing him again for a laceration.

Q Were you of the opinion that the injury of May 3, 1983 was an injury that occurred by accidental means or did you feel that that was another abuse situation?

A I felt that particular injury was probably by accidental means in that the history relating to it was appropriate and that falling on a wagon could certainly cause a laceration of that sort.

Q So you didn't indicate to the social service worker that you had any further suspicion of child abuse as of this time in that case, namely, May 3rd of 1983; is that correct?

A I don't remember stating it exactly like that. I'm sure that I told her that he had not—he had missed his appointment and that this was his second injury and that I was concerned about the injuries.

Q I'm not saying you made that statement, but I'm wondering did you make any statements indicating that you had new (p. 53) or further suspicions of child abuse as of—

A Yes, in that he's had two more injuries.

Q He had the injury of May 3, 1983; correct?

A Yes, May 3rd and March 14, '83 which I didn't see him for, but had record of at that point.

Q The May 3rd, 1983 injury you thought was by accidental means, not because of child abuse you told us, right?

A That's right.

Q And the March 14th of '83 visit, did you think that somehow involved child abuse?

A The information I had on that was very cursory. My concern was that a child who we had been worrying about child abuse because of injuries had two more injuries.

Q You were reporting all the injuries as they occurred to the social service worker?

A That's right.

Q Then there was—Strike that.

If at any point in time subsequent to January 25th of 1983 you felt the child was abused once again, was there any action you could take to have the child once again placed in temporary physical custody?

A I could have had him readmitted to the hospital, I'm sure, if my suspicions had been—if I felt that he was

in immediate danger at that point. That was not my opinion.

(p. 54) Q I'm just wondering hypothetically.

A Hypothetically, sure. We would go through basically the same procedure that had been done in January.

Q So if subsequent to January 25, 1983 you thought you were faced with another possible child abuse situation, you could then go back and run through the steps and procedures that you ran through on January 22nd of '83?

A That's right.

Q Now the next contact with a hospital or medical doctor, according to your Nicholet Clinic notes, would have been on May 8th of '83?

A Yes.

Q What was that about?

A Joshua returned to the emergency room and had the sutures removed that I had put in.

Q Did you do that?

A No, I didn't. He saw the emergency room doctor rather than come to my office.

Q Are there records reflecting that visit in your possession?

A Yes.

Q Now I presume that record is from Theda Clark?

A Yes.

Q And that indicates that the sutures were removed?

A That's right.

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EXHIBIT G

(p. 44) Q You have to answer.

A Yes, I have. And I can cite a specific incident in Outagamie County in the last several years. In the last several years the public's index of suspicion of an awareness of child abuse has become greater, and my personal awareness of it has increased, too.

As a result of my work with the alcohol and drug rehabilitation program I am more acutely aware of how much verbal and physical abuse there is and what effect this has on children as they get older and become adolescents and the problems. And in the last year since I've held that role I think I have been more aggressive in getting into the situation of the presentation and finding out if Social Services is involved, and if they aren't, getting them involved.

It's not a crusade by any stretch of the imagination, but my awareness is greater and so I feel like perhaps we can do something, and attempt to do so. I cannot say at this particular time in '83 that I was functioning at my current level of awareness and my current resolve at getting involved.

Q Okay. And you're also telling me that in November of 1983 you didn't pick up the telephone and attempt to reach the Department of Social Services with respect to Joshua DeShaney, correct?

(p. 45) A That's exactly what I'm saying. As a matter of fact, I didn't really fill out the report that went to the Department of Social Services. I specifically avoided filling out that report because it would have given me a greater likelihood of being called to testify.

Q Called to testify in what?

A If this particular incident were to be investigated.

Q By the Department of Social Services?

A By whatever department investigates abuse reports. If the nurse filled out the report, then they most likely would talk to her as opposed to me, and my physical findings as noted are documented.

Q Is that why you did not put a formal diagnosis of child abuse on your written report as well?

A If I have a person who presents with chest pain and I admit them to the hospital because I think they may be having a heart attack but I don't know, I will have done a cardiogram, perhaps some blood studies, and I would dictate a final diagnosis as chest pain of unknown etiology, rule out myocardian infraction.

I have never—I can't say that, perhaps I have—but I don't recall specifically discharging a patient with a diagnosis of suspected child abuse. I have never used those exact words, to my knowledge, in a discharge diagnosis.

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(p. 48) Services, or from Mercy Medical Center, or from some third entity, do you know?

A I do not know where the form comes from. We do, however—I do know, however, that we have the forms in the department.

Q Do you on occasion fill out those forms?

A I have never filled out a child abuse report, no.

Q And you indicated that you did not fill out the child abuse form with respect to Joshua DeShaney, because if you did you might be asked to testify by some investigative agency, correct?

A I would have been more likely—My feeling at that time was having never testified before in this type of agency, was that I'd be more likely to be called to provide information in an investigation if I were the one to have filled out the form.

Q Okay. And I take it by that answer that you did not want to be called to testify; is that correct?

A The rational for not wanting to be called needs to be explained.

Q First of all, you didn't want to be called; is that correct?

A That is correct, I did not want to be called.

Q Now you're going to tell me why?

A That's correct.

(p. 49) (A discussion was had off the record.)

A There are many—One of the reasons I practice primarily in Appleton and live in Oshkosh is because I —and the reason I'm an emergency physician as opposed

to having a private practice, is that I value my free time above and beyond almost everything else. I also value a degree of anonymity and enjoy that anonymity in this community because no one knows I'm a doctor. I can go to the Y or anyplace else and I'm unknown, and I like that type of anonymity.

Not wanting to testify is not that I'm not comfortable with my ability to provide information, it's not that I want to avoid being of service in a situation where service needs to be rendered, it's just plain I didn't want to devote the time to it.

For instance, our problem with scheduling now, you tried to get me on for Thursday. I'm working 24 hours, and trying to get off was impossible. The nurse, however, has a lot of people to cover for her. If she's called to testify, she'll be reimbursed by the hospital, that's paid. She has someone else to cover for her and it's absolutely no problem for them to get the time.

If, however, sometime down the road I'm called to testify and it conflicts with my work schedule, for insance, then it can create some problems. So it's (p. 50) not my reluctance to be of service, but rather the potential for conflict with time constraints in the future that I would at that time not have filled out the report—

Q Okay.

A—myself. And there are other reasons beyond that. I'm the emergency physician in a department where there's one doctor, three RN's, three LPN's and one aide. I see every patient that comes in and I don't have time to sit down and fill out a two or three-page report hand-

written about a case of suspected child abuse at the time. And I know that that report was filled out immediately after that patient left the department.

Q Let's me interrupt you for a second. The question that I want you to be answering now is why you really did not want to testify rather than why you didn't fill out the report, although those two make go hand-in-hand?

A The reason for not wanting to testify is simply the time constraints, I answered that question. I went on to say why I, myself, would not have filled out the report immediately.

Q Okay.

A Even if I had wanted to testify sometime in the future, I wouldn't have filled it out immediately because of the time constraints at the time. I have to keep moving and

* * *

(p. 55) Q Okay. And where it went from there you didn't know?

A That's correct. My understanding of my responsibilty for suspected child abuse is to ensure that a report is submitted of that abuse. I do not—I am not aware that I am obliged to pick up the phone or call the police, or obliged to pick up the phone and call the Department of Social Services at that time, but rather that I am obliged to be assured that a report is sent to the appropriate agency.

Q Who is the appropriate agency?

A Social Services in the hospital in this case. And if I were at St. Elizabeth's I would send it ot the Department of Social Services there, or to pick up the phone and call the Department of Social Services in Outagamie County, they're more readily available than they are in Winnebago County.

Q Where did you get that understanding that all you have to do is see that a report is submitted to Social Services in the hospital and they take it from there?

A I've never received any form of communication from any agency that says, "This is the procedure to follow in the case of abuse."

Q How do you as a doctor know what you're supposed to do in a case of suspected child abuse? In other words, why do you feel in your own mind that all you have to do is (p. 56) submit a report or see that a report is submitted to the Social Services Department in the hospital rather than immediately picking up the phone or personally contacting either the police department or the Department of Social Services?

A Well, what we did in this particular instance was submit a report, and it seemed adequate apparently because no one came back to me and said, you should have done this. So I have no—As I say, no one has ever sent me a communication, no one's ever sat down with me from the Department of Social Services and said, this is the process of reporting—

Q Can I stop you for just a second. When you use the term Department of Social Services in your testimony, are you always referring to the Department of Social Services at Mercy Medical Center?

A I'm referring to the Department of Social Services at the hospital.

Q Okay. And that's something separate and distinct from the Winnebago Department of Social Services?

A I don't really know.

Q I think I interrupted you and I didn't mean to do that. Why don't we have the Court Reporter read back where you were and then you can continue.

A It was pertaining to my understanding of my obligation,

* * *

(p. 69) Q No, not that I know of.

A Then I'm mistaken. But if I had filled out a report, it would essentially have been identical to the report the nurse filled out, and multiplicity of reports doesn't accomplish more than one good succinct concise report.

Q What I'm trying to determine here is exactly what you did with respect to reporting this high degree or high possibility of child abuse. Now is it fair to say that the only thing you did with respect to reporting your high suspicion of child abuse to anyone outside the hospital was to instruct a nurse to fill out this report?

A I instructed Nancy Rolfs specifically to fill out a report.

Q Over and above that you didn't do anything with respect to reporting this, correct?

A Over and above that I did nothing. And I am not aware of anything else that needed to be done or that

should have been done at the time, unless I would have been fearful for the child's immediate well-being, which I apparently wasn't. I wasn't concerned that the child might go home and suffer a lethal or even disabling injury in the next few days.

Q You did not feel that the immediate well-being of the child was in danger at that time; is that correct?

A. That's correct.

* * *

EXHIBIT H

(p. 26) A I think I left the general physical examination up to Dr. Kayali, but I was there as we, for instance, counted the old bruises and what we observed.

Q Do you recall at this time where you observed the old bruises?

A Vaguely, but—

Q Maybe if you look at page 2 of the discharge summary, I believe it's summarized.

A Physical exam in the emergency room.

Q Is that where those notes came from that were put into the discharge summary?

A This is what I'm looking at, discharge summary, page 2.

Q With respect to the statements contained in that document, it indicates that there were multiple bruises on the lower extremities and buttocks and face on the right

forehead. With respect to the multiple bruises on the lower extremities, can you tell me where they were observed?

A You mean when they were observed?

Q No, where on the lower extremities? Were they on the back of the legs, the shins?

A Yes, basically the buttocks were the most heavily bruised.

Q Do you recall any bruises on the lower legs?

A Yes.

(p. 27) Q Where were those located?

A I think there were a couple of them in the front of the legs. Again, I—I recall seeing a few just below the knee, different colors.

Q Were there any bruises on his arms?

A As I recall, he had again just some old bruises, mostly brownish type bruises on the upper arms.

Q On both arms?

A I think so.

Q Did he have any bruises on his shoulders?

A I don't recall that striking me.

Q The physical exam though indicates that he has some bruises on his face. Do you recall where the bruises were on his face?

A I don't recall. It says in the notes here that he had some in the right forehead. I don't recall. What I do recall is—and this is not in here because Dr. Kayali was

not there when we observed the scalp because he does mention here no bruise on the scalp. But when we took him to the operating room we shaved him and found a lot of bruises on the old bruises, little brown spots all over his scalp; and as a matter of fact, I think we took pictures.

Q The hospital took pictures or did the police department?

A No, we took pictures.

(p. 28) Q Would those be in the file somewhere?

A I don't know what happened to them. As a matter of fact, if I recall, I think they didn't turn out or something like that, but I know we took pictures.

Q Since they may not have turned out, can you describe for me as accurately as possible what you observed with respect to those old bruises on the scalp area?

A Well, they were on both sides of the scalp, in the front, in the back. They varied from quarters to dime size, and they were definitely old.

Q How many do you recall observing?

A I would say approximately half a dozen.

Q And those would be in the areas that would be covered by his hair normally?

A Yes.

Q The bruise that was observable on his face, I believe on the right forehead, how large was that?

A I think it was about a quarter size.

Q Were there any other bruises observable on his face, on his cheeks or his chin or any other areas like that?

A I think it was about a quarter size.

Q Were there any other bruises observable on his face, on his cheeks or his chin or any other areas like that?

A I think there was, but I really don't recall precisely.

Q And all the bruises about his head, in your opinion, they were not fresh.

A No.

Q My statement was correct. They were not fresh.

(p. 29) A They were not fresh, and I think I can prove that even further because I—I did—when you do a craniotomy you have to turn the flap, and the skin underneath and the structures underneath the skin were not discolored. That is, it was fairly old. There was no evidence any time of fresh trauma. You usually have, for instance, there's different structures called the periosteum which covers the bone in the galea, and there's no hemorrhage in those.

Q When you lifted the skin and the subcutaneous tissue that covers the skull, you observed no hemorrhage on any of that.

A Right.

Q Indicating in your own mind that any of the bruises that you saw about the head were old bruises.

A Right. And also telling me again that this fall down the stairs was not the cause of this injury.

Q In describing the color of the bruises, they use colors such as blue, brown, yellow, faint red and red. Can you tell me where the fresher bruises appeared to be on his body?

A I think the lower extremities were the most obvious. They were the ones that were red, quite red and blue.

Q As part of the examination they found that there was no blood in the ear canals. Was that significant from the (p. 30) standpoint of any of your opinions?

A Only that if there had been blood, we would have determined that there could have been a fresh injury like a fall down the stairs or something like that.

Q It says there was also no blood behind, and there's an abbreviation, TM's. What's that?

A Tympanic membranes, which are the membranes that—it's like skin over a drum. That's exactly—eardrum basically.

Q And it also says nose showed no blood, mouth was okay.

A Right.

Q Once again, is that indications that there was no fresh trauma to the head?

A Not necessarily. I mean, it certainly adds to the thing, but if—even if, he could have had fresh trauma to the head and have no blood in his mouth.

Q Next I want to discuss the operation you performed on March 8th of '84.

A Yes.

Q And I believe you have prepared, and it's in the hospital records, an operative report, and I'm going to be going—my questions are going to be based on your operative report, so you can follow along. In your operative report you note a preoperative diagnosis of acute subdural hematoma with brain contusion?

* * *

EXHIBIT I

(p. 5) Q Where?

A My freshman year I went to San Diego State College in California.

Q What did you do after your freshman year?

A I went back to—came back to Wisconsin and went to Madison.

Q Did you finish at Madison?

A Yes, I did. I got my Bachelor's Degree at Madison.

Q Was that a BS?

A BA.

Q In what, please?

A Social Work.

Q And what year did you get that?

A 1971.

Q And when you graduated with your BA Degree in '71, did you continue at that time with schooling or did you go to work?

A Yes, I did. I continued.

Q What did you do?

A I continued at Madison and got my Master's Degree.

Q Was that a BSW?

A MSW.

Q Master of Science in Social Work?

A Yes.

Q I have heard the term MSW tossed around a lot. Are those (p. 6) two different degrees?

A Basically they're the same. At Madison they give you a MSSW.

Q Okay. And when did you receive your Master's Degree?

A 1972.

Q So you just went straight through and got the Master's Degree?

A Yes.

Q And when you got your Master's Degree, what did you do then?

A I got a job.

Q Tell us about that?

A The job was Group Home Coordinator in the Foster Care Unit, Winnebago Department of Social Services in Oshkosh.

Q Group Home Coordinator?

A Yes.

Q Of the Foster Home Unit?

A In the Foster Home Unit.

Q In the Winnebago County DSS?

A Yes.

Q What does that mean?

A What does what mean?

Q That very long and fancy job title. What does that merely mean?

A I had responsibility for, at the time, four group homes,

* * *

(p. 8) A Right.

Q What did you do then?

A I got the job as Supervisor of the Child Protective Services Unit with Winnebago County of Protective Services.

Q And that's the job you're in presently?

A Yes.

Q So you took that job on somewhere around the middle of 1973?

A 1974.

Q Do you remember a month?

A May.

Q So you have been in that job essentially eleven and one-half years now?

A Yes.

Q Have there been any breaks in service, leaves of absence, things of that sort?

A No.

Q I'm not asking you about did you take vacation, but you didn't go away for six months for a sabbatical or something?

A No.

Q As Child Protection Service Supervisor, are your duties at the present time essentially what they have been throughout the time of your service in that job?

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